# Explanatory Notes Relating to the Income Tax Act, Excise Tax Act, Excise Act, 2001, Universal Child Care Benefit Act, Children's Special Allowances Act and Related Legislation

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## Preface

These explanatory notes describe proposed amendments to the *Income Tax Act*¸ *Excise Tax Act*, *Excise Act, 2001*, *Universal Child Care Benefit Act*, *Children's Special Allowances Act* and related legislation. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

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These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

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**Part 1 – Amendments to the Income Tax Act and to Related Legislation**

**Clause 2**

**Stock dividends**

ITA
52(3)(*a*)

Subsection 52(3) of the Act establishes the cost of a share received as a stock dividend by a shareholder of a corporation.

Paragraph 52(3)(*a*) provides that, where a shareholder receives a stock dividend that is a dividend, the cost to the shareholder of the share received is generally the amount of the stock dividend. In the case of such a stock dividend paid to a corporate shareholder, the cost of the share does not include the amount, if any, of the dividend that the corporation may deduct under subsection 112(1) in computing its taxable income, except the portion of the dividend that would not be a capital gain under subsection 55(2) because it could reasonably be considered to be attributable to the income earned or realized by any corporation (commonly known as "safe income").

Paragraph 52(3)(*a*) is amended consequential to amendments made to section 55.

Amended subparagraph (*a*)(i) provides that, where the stock dividend is received by an individual, the cost of the share to the individual is the amount of the stock dividend. This amount is, in general, the related corporate paid-up capital in respect of the stock dividend.

In any other case, amended subparagraph (*a*)(ii) provides that the cost of the stock dividend is the total of two amounts which are determined under clauses (A) and (B) respectively.

In general terms, clause (A) provides that the cost of a stock dividend received by a corporation is the safe income that could reasonably be considered to contribute to the unrealized capital gain on the share on which the stock dividend is paid. More specifically, the amount under clause (A) is the amount, if any, by which

- the amount that is the lesser of the amount of the stock dividend (see the definition "amount" in subsection 248(1)) and its fair market value,

exceeds

- the amount of the dividend that a shareholder that is a corporation may deduct under subsection 112(1), except any portion of the dividend that, if paid as a separate dividend, would not exceed the amount of income earned or realized by any corporation that could reasonably be considered to contribute to the capital gain that could be realized on a disposition at fair market value of the share on which the dividend is received. As is the case under the current rule, the reduction for amounts deductible under subsection 112(1) is to be applied regardless of whether subsection 55(2) actually applies to the dividend (subject to the exception for safe income).

In general terms, clause (B) applies if the anti-avoidance rule in subsection 55(2) applies in respect of the stock dividend (or would have applied if there were no safe income in respect of the stock dividend). The description of B in the formula concerns cases where the fair market value of a stock dividend exceeds the amount of the stock dividend for the purpose of clause (A) above. This could be the case if the fair market value of a share that is issued as a stock dividend is greater than the amount by which the paid-up capital of the corporation that paid the dividend is increased by reason of the stock dividend (commonly called "high-low" shares), which fair market value is deemed to be the amount of the dividend for the purpose of subsection 55(2) under subsection 55(2.2).

Clause (B) provides an amount that is determined by the formula A + B:

- Variable A is the amount of the stock dividend deemed to be a capital gain by amended paragraph 55(2)(*c*). For this purpose, and unlike in clause (A) discussed above, the "amount" of the stock dividend is determined under new subsection 55(2.2) – in general, that amount corresponds to the fair market value of the share issued as a stock dividend and not its paid-up capital.
- Variable B is the amount, if any, by which the amount of the stock dividend that is deemed by paragraph 55(2.3)(*b*) to reduce the safe income of any corporation that could reasonably be considered to contribute to the capital gain on the share (which gain was reduced by the dividend) exceeds the amount determined for clause (A).

**Example**

- *Holdco owns all of the shares (Class A) of Subco, which have a fair market value (FMV) of $100 and an adjusted cost base of $0.*
- *Subco pays Holdco a stock dividend by issuing a preferred share (Class B) having a FMV of $100 and a paid-up capital of $40. The amount of the stock dividend is $40, its paid-up capital (see the definition "amount" in subsection 248(1)).*
- *Subco has $70 of safe income that can reasonably be considered to contribute to the capital gain that could be realized by Holdco on a disposition at FMV, immediately before the dividend, of the Class A shares of Subco.*
- *Paragraph 55(2)(a) applies to deem $30 of the fair market value of the stock dividend not to be a dividend (that is, the excess of the FMV of the Class B share issued as a stock dvidend ($100) over safe income($70)).*

*Under subparagraph 52(3)(a)(ii), the cost of the Class B share to Holdco is $100. The following illustrates the calculation of the cost of the Class B share to Holdo, which is equal to the total of the amounts determined under Clauses A and B.*

*The amount under Clause A is $40, which is the amount, if any, by which the amount determined under subclause (A)(I) exceeds the amount determined under subclause (A)(II).*

- *$40 is the amount determined under subclause (A)(I), which is the lesser of the FMV of the Class B share ($100) and the amount of the stock dividend ($40)under the definition "amount" in subsection 248(1).*
- *$0 is the amount under subclause (A)(II), which the amount of the stock dividend that is deductible under subsection 112(1) ($40) except any portion of the dividend that would not be subject to subsection 55(2) because it is safe income in respect of the Class A*

*shares ($70 is safe income).The end result is $0 because the whole $40 dividend is from safe income.*

*The amount under Clause B is $60, which is the amount determined by the formula A + B.*

- *$30 is the amount determined for variable A, which is the amount deemed to be a gain under paragraph 55(2)(c) in respect of the stock dividend. In general terms, the deemed gain under paragraph 55(2)(c) is the amount by which the greater of the fair market value ($100) and paid-up capital of the stock dividend ($40), being $100, exceeds the related safe income ($70).*
- *$30 is the amount determined for variable B, which is the amount of the safe income reduction under paragraph 55(2.3)(b) ($70) that exceeds the amount under Clause A ($40)).*

In general, this amendment applies to dividends received after April 20, 2015.

**Clause 3**

**Adjusted cost base – deemed dividend**

ITA
53(1)(*b*)(ii)

Subparagraph 53(1)(*b*)(i) of the Act provides an addition to the adjusted cost base (ACB) to a taxpayer of property that is a share of the capital stock of a corporation resident in Canada. This increase is equal to the amount that is deemed to be a dividend received by the taxpayer before that time under the anti-avoidance rule in subsection 84(1). In the case of a corporate shareholder, however, subparagraph 53(1)(*b*)(ii) reduces the addition referred to in subparagraph (i) by the portion, if any, of the deemed dividend that the shareholder is permitted to deduct under subsection 112(1) in computing its taxable income, except the portion of the dividend that would not be a capital gain under subsection 55(2) because the gain could reasonably be considered to be attributable to income earned or realized by any corporation before the safe-income determination time (“safe income”). Essentially, the amount that is added to the cost of the share because of the deemed dividend is limited to the related safe income.

The wording of subparagraph (*b*)(ii) is amended consequential to amendments made to section 55 (that is, to be consistent with the wording of new paragraph 55(2.1)(*c*)). Subsection 55(2.1)(*c*) applies where a taxable dividend exceeds the amount of safe income that could reasonably be considered to contribute to the capital gain that could be realized on a disposition at fair market value, immediately before the dividend, of the share on which the dividend is received. Accordingly, the amount of the dividend that is added to the cost of the share under subparagraph (*b*)(ii) is limited to the safe income that could reasonably be considered to contribute to the capital gain of the share on which the dividend is received.

This amendment applies to dividends received after April 20, 2015.

**Clause 4**

**Definitions**

ITA
54

Section 54 of the Act contains various definitions that apply for the purposes of subdivision C – Taxable Capital Gains and Allowable Capital Losses.

**“proceeds of disposition”**

ITA
54(*j*)

Paragraph 54(*j*) of the definition “proceeds of disposition” provides that the proceeds of disposition of a share do not include any amount that is deemed by subsection 84(2) or (3) to be a dividend received in respect of the share and that is not deemed by paragraph 55(2)(*a*) or subparagraph 88(2)(*b*)(ii) not to be a dividend.

Paragraph (*j*) is amended consequential to amendments to subsection 55(2). Amended paragraph (*j*) excludes from the definition “proceeds of disposition” any amount that would otherwise be proceeds of disposition of a share to the extent that the amount is either an amount described in new subparagraph (i) or (ii).

New subparagraph (*j*)(i) excludes from the definition “proceeds of disposition” the amount that is deemed by subsection 84(2) or (3) to be a dividend received except to the extent the dividend is deemed to be proceeds of disposition by paragraph 55(2)(*b*), or is deemed not to be a dividend by subparagraph 88(2)(*b*)(ii).

This amendment applies to dividends received after April 20, 2015.

**Clause 5**

**Taxable dividends received by corporations resident in Canada**

ITA
55

Section 55 of the Act applies to certain transactions under which a corporation resident in Canada receives a taxable dividend that is deductible under subsections 112(1) , 112(2) or 138(6).

**Deemed proceeds or gain**

ITA
55(2)

Subsection 55(2) of the Act is an anti-avoidance provision directed against dividends designed to use the intercorporate dividend deduction to unduly reduce the capital gain on any share. When the subsection applies, the amount of the dividend is deemed to be either proceeds of disposition of the share on which the dividend is paid or a capital gain of the corporation that received the dividend, and not to be a dividend received by the corporation. Section 55 is intended to counter the reduction of corporate capital gains on any share through the payment of tax-deductible dividends that reduce the share's fair market value or that increase the cost of property.

Subsection 55(2) does not apply where the gain that has been reduced is attributable to the share's portion of the income ("safe income") earned or realized by any corporation after 1971 and before the safe-income determination time for the transaction, the event or the series of transactions or events in which a corporation resident in Canada has received a dividend deductible under subsections 112(1), 112(2) or 138(6). Safe income is protected from the application of subsection 55(2) because this income has been subject to corporate income tax and should therefore be allowed to be paid as a tax-free dividend to other Canadian corporations.

Subsection 55(2) currently applies where one of the purposes of (or, in the case of a dividend under subsection 84(3), one of the results of) a dividend is to significantly reduce the capital gain on any share.

A recent decision of the Tax Court of Canada held that the current anti-avoidance rule did not apply in a case where the effect of a dividend in kind (consisting of shares of another corporation) was to create an unrealized capital loss on shares (that is, the shares had a cost that exceeded fair market value after the dividend is paid). The unrealized loss was then used to avoid corporate capital gains tax otherwise payable on the sale of another property. These transactions can have an effect identical to transactions that directly reduce a corporate capital gain. Such transactions may be challenged by the Government under the existing general anti-avoidance rule. However, as any such challenge could be both time-consuming and costly, section 55 is being amended to ensure that the appropriate tax consequences apply.

Subsection 55(2) is amended to address the same tax policy concern that can arise where dividends are paid on a share not to reduce a capital gain on the share but instead to cause a significant decrease to the fair market value of the share or to cause a significant increase in the total cost amounts of properties of the corporate dividend recipient. Such dividends can result in an undue reduction of corporate capital gains.

*Example*

*Corporation A wholly owns Corporation B, which has one class of shares (Class B). These shares have a fair market value (FMV) of $1 million and an adjusted cost base (ACB) of $1 million.*

*Corporation A sets up Corporation C which has one class of shares (Class C). These Class C shares have a FMV/ACB= $0.*

*Corporation A transfers its Class B shares (FMV/ACB=$1 million) to Corporation C in return for additional Class C shares (FMV/ACB=$1 million).*

*Corporation C pays a $1 million dividend in kind to Corporation A – the in kind property is Corporation C's Class B shares of Corporation B (FMV/ACB=$1 million).*

*Result:*

1. *Corporation C has a $0 capital gain from disposing of its Class B shares of Corporation*

*B (FMV/ACB=$1 million).*

2. *The FMV of Corporation C is reduced by $1 million because of the payment of the $1 million dividend in kind.*
3. *The FMV of Corporation A's Class C shares of Corporation C is reduced to $0 from $1 million. Their ACB remains $1 million.*
4. *The total cost amount of all of Corporation A's properties is*
   a. *$1 million immediately before the dividend (Class C ACB=$1 million), and*
   b. *$2 million immediately after the dividend (Class C ACB=$1 million + Class B ACB=$1 million).*

Subsection 55(2) is replaced by subsections 55(2) to (2.5).

Amended subsection 55(2) provides that if it applies to a taxable dividend received by a corporation resident in Canada (referred to in subsections (2) to (2.2) and subsection (2.4) as the "dividend recipient"), the amount of the dividend (other than the portion of it, if any, subject to tax under Part IV that is not refunded as a consequence of the payment of a dividend by a corporation where the payment is part of the series referred to in subsection (2.1)) is deemed not to be a dividend received by the dividend recipient (paragraph 55(2)(*a*)). Instead, the amount of the dividend is deemed to be either:

- proceeds of disposition of the share by paragraph 55(2)(*b*), if the dividend is received on a redemption, acquisition or cancellation of a share, by the corporation that issued it, to which subsection 84(2) or (3) applies, except to the extent that it is otherwise included in computing such proceeds; and
- a gain of the dividend recipient, for the year in which the dividend was received, from the disposition of capital property by paragraph 55(2)(*c*), in the case of any dividend that is not subject to the application of paragraph (*b*).

In the case of the exception from subsection 55(2) accorded the portion of a dividend to which Part IV tax applies, this exception does not apply if a refund of Part IV tax is received as part of a series as a consequence of the payment of a taxable dividend by a corporation to any shareholder, including an individual.

This amendment applies to dividends received after April 20, 2015.

**Application of subsection 55(2)**

ITA
55(2.1)

New subsection 55(2.1) of the Act determines if subsection 55(2) applies to a taxable dividend received by a corporation resident in Canada (referred to in subsections (2) to (2.2) and subsection (2.4) as the "dividend recipient") as part of a transaction or event or a series of transactions or events. Subsection 55(2) applies to a dividend recipient's taxable dividend if the three conditions in paragraphs 55(2.1)(*a*) to (*c*) are met.

First, the condition in paragraph (*a*) is met where the dividend recipient is entitled to a deduction in respect of the taxable dividend under subsection 112(1) or (2) or 138(6).

Second, the condition in paragraph (*b*) is met where

(i) one of the purposes of the payment or receipt of the dividend (or, in the case of a dividend under subsection 84(3), one of the results of which) is to effect a significant reduction in the portion of the capital gain that, but for the dividend, would have been realized on a disposition at fair market value of any share of capital stock immediately before the dividend, or

(ii) the dividend (other than a dividend received in respect of a redemption, acquisition or cancellation of a share, by the corporation that issued it, to which subsection 84(2) or (3) applies) is received on a share that is held as capital property by the dividend recipient and one of the purposes of the payment or receipt of the dividend is to effect

- a significant reduction in the fair market value of any share, or
- a significant increase in the amount that is the total of the cost amounts of all properties of the dividend recipient.

The "one of the purpose" tests in subparagraphs (*b*)(i) and (ii) are to be applied separately to each dividend. For example, subparagraph (*b*)(ii) could apply to a dividend one of the purposes of which is to increase significantly the cost of any property even if subparagraph (i) applies (or does not apply because one of the purposes was not to reduce significantly a gain on any share). Subparagraph (*b*)(ii) does not apply, however, to a dividend received on the redemption, acquisition or cancellation of a share by the corporation that issued it, to which subsection 84(2) or (3) applies. In such cases, the shares are disposed of to the issuing corporation.

Third, the condition in paragraph (*c*) is met where the amount of the dividend exceeds the amount of safe income that could reasonably be considered to contribute to the capital gain that could be realized on a disposition at fair market value, immediately before the dividend, of the share on which the dividend is received. Former subsection 55(2) referred to the safe income exception by referring to the portion of the capital gain "attributable" to safe income. Paragraph (2.1)(*c*) instead refers to the portion of the safe income that could reasonably be considered to "contribute" to the capital gain that could be realized. This change of wording is intended to accommodate the new purposes described in subparagraph (*b*)(ii).

This amendment applies to dividends received after April 20, 2015.

**Special rule – amount of the stock dividend**

ITA
55(2.2)

New subsection 55(2.2) of the Act sets out the amount of a stock dividend for the purpose of applying subsections (2), (2.1), (2.3) and (2.4). For this purpose, the amount of a stock dividend and the dividend recipient's entitlement to a deduction under subsection 112(1) or (2) or 138(6) in respect of that dividend is the greater of (1) the increase in the paid-up capital of the corporation that paid the dividend because of the dividend, and (2) the fair market value of the share received as a stock dividend.

*Example*

*Assume that Corporation A pays a stock dividend to Corporation B and that the share that is issued as a stock dividend has a fair market value (FMV) of $1 million and a paid-up capital (PUC) of $1.*

*The amount of the stock dividend to Corporation B is $1 million for the purpose of applying subsections 55 (2), (2.1), (2.3) and (2.4). Under subsection 55(2.2), the amount of the stock dividend is the greater of*

- *$1 (PUC of $1, which would otherwise be the amount of the stock dividend under the definition "amount" in subsection 248(1)), and*
- *$1 million (the FMV of the share issued as a stock dividend).*

*As a result, the "one of the purposes" tests in subparagraph 55(2.1)(b)(i) and (ii) are to be applied to a $1 million dividend instead of the $1 dividend determined under the definition of "amount" in subsection 248(1).*

For further information, see commentary on subsection 52(3).

This amendment applies to dividends received after April 20, 2015.

**Stock dividends and safe income**

ITA
55(2.3)

New subsection 55(2.3) of the Act applies if the conditions in new subsection 55(2.4) are met. In general terms, new subsection 55(2.3) applies to a stock dividend if the fair market value of the share that is issued as a stock dividend exceeds the amount of the related increase in the paid-up capital of the corporation that paid the dividend, to the extent that the dividend would have been subject to subsection 55(2) if the exception regarding income earned or realized by any corporation after 1971 and before the safe-income determination time ("safe income") did not exist.

Subsection 55(2.3) provides two rules regarding the amount of a stock dividend and safe income.

First, paragraph 55(2.3)(*a*) provides in general that the amount of a stock dividend is deemed to be a separate taxable dividend for the purpose of applying subsection 55(2) to the extent of the portion of the amount that does not exceed the safe income that could reasonably be considered to contribute to the capital gain that could be realized on a disposition at fair market value, immediately before the dividend, of the share on which the dividend is received. The effect of this provision is analogous to that provided to dividends received out of a corporation's safe income under amended paragraph 55(5)(*f*). The portion of the stock dividend that exceeds the amount of safe income, if any, can be subject to subsection 55(2).

Second, paragraph 55(2.3)(*b*) provides in general that the separate dividend out of safe income to which paragraph (*a*) applies is deemed to reduce the safe income of any corporation that could reasonably be considered to contribute to the capital gain that could be realized on a disposition at fair market value, immediately before the dividend, of the share on which the dividend is received.

This amendment applies to dividends received after April 20, 2015.

**Application of subsection 55(2.3)**

ITA
55(2.4)

New subsection 55(2.4) of the Act provides that new subsection (2.3) applies if the conditions indicated in paragraphs (*a*) to (*c*) are met.

First, the condition in paragraph (*a*) is met where a corporation resident in Canada (referred to in subsections (2) to (2.2) and subsection (2.4) as the “dividend recipient”) holds a share upon which it receives a stock dividend.

Second, the condition in paragraph (*b*) is met where the fair market value of the share or shares issued as a stock dividend exceeds the amount by which the paid-up capital of the corporation that paid the stock dividend is increased because of the dividend.

Third, the condition in paragraph (*c*) is met where subsection 55(2) would apply to the dividend if subsection (2.1) were read without reference to its paragraph (*c*). In general, paragraph 55(2)(*c*) applies where the amount of a dividend exceeds the safe income that could reasonably be considered to contribute to the capital gain of the share on which the dividend is received.

As result, if one of the purposes of the payment or receipt of a stock dividend is to significantly reduce a capital gain on any share, to significantly reduce the fair market value of any share or to significantly increase the total of all cost amounts of all properties of the dividend recipient, the amount of the dividend (which is the greater of its fair market value and its paid up capital for the purpose of section 55) can be either

- a taxable dividend paid out of safe income (to the extent that subsection (2.3) applies), or
- a taxable dividend to which subsection (2) applies (except to the extent that the Part IV exception applies to the dividend, or if the exemptions in subsection 55(3) apply).

This amendment applies to dividends received after April 20, 2015.

**Determination of reduction in fair market value**

ITA
55(2.5)

New subsection 55(2.5) of the Act provides that, for the purpose of applying the fair market value (FMV) reduction rule in clause 55(2.1)(*b*)(ii)(A), whether any dividend causes a significant reduction in the fair market value of any share is to be determined as if the fair market value of the share, immediately before the dividend, was increased by an amount equal to the amount, if any, by which the fair market value of the dividend received on the share exceeds the fair market value of the share.

*Example*

*Corporation A owns all of the shares of Corporation B, which have a total fair market value (FMV) of $0.*

*Corporation B borrows $2 million to pay a $2 million dividend to Corporation A. The FMV of the shares of Corporation B remains at $0 after the payment of the $2 million dividend. Therefore, the dividend has not reduced the FMV of the shares of Corporation B.*

*The FMV of the dividend ($2 million) exceeds the FMV of the shares ($0) by $2 million.*

*Subsection 55(2.2) requires that the FMV of the shares of Corporation B be increased by $2 million before the dividend (the amount by which the FMV of the dividend exceeds the FMV of the share on which the dividend was paid). Consequently, the reduction in the FMV of the shares caused by the dividend is considered to be $2 million (as opposed to no FMV reduction without the rule).*

This amendment applies to dividends received after April 20, 2015.

**Exemption from subsection 55(2)**

ITA
55(3)(*a*)

Paragraph 55(3)(*a*) of the Act provides an exemption from the application of subsection 55(2) for dividends received in the course of certain related-party transactions. More specifically, paragraph (*a*) exempts a dividend received by a corporation if, as part of a transaction or event or a series of transactions or events that includes the receipt of the dividend, there was not, at any particular time, a disposition of property or a significant increase in the total direct interest in a corporation in the circumstances described in subparagraphs (*a*)(i) to (v).

The exemption for dividends in paragraph (*a*) is amended to apply only to dividends received on a redemption, acquisition or cancellation of a share, by the corporation that issued it, to which subsection 84(2) or (3) applies. In both cases, the dividend arises on a cancellation of the share. This change is made consequential to amendments to subsection 55(2) and new subsections 55(2.1) to (2.5). It is meant to ensure that subsections 55(2) to (2.5) are not circumvented by related persons using other types of dividends to significantly reduce a capital gain in respect of any share, to significantly reduce the fair market value of any share or to significantly increase the total of the cost amounts of all of the properties of the dividend recipient.

The amended exception in paragraph (*a*) for related-person dividends is intended to facilitate *bona fide* corporate reorganizations by related persons. It is not intended to be used to accommodate the payment or receipt of dividends or transactions or events that seek to increase, manipulate, manufacture or stream cost base.

This amendment applies to dividends received after April 20, 2015.

**Interpretation of paragraph 55(3)(*a*)**

ITA
55(3.01)(*d*)(i)

Subsection 55(3.01) contains various interpretative rules for the purpose of paragraph 55(3)(*a*). Paragraph 55(3.01)(*d*) provides that proceeds of disposition are to be determined without reference to

- the expression "paragraph 55(2)(*a*) or" in paragraph (*j*) of the definition "proceeds of disposition" in section 54, and
- section 93.

Subparagraph (*d*)(i) is amended to provide that proceeds of disposition are to be determined without reference to subparagraph (*j*)(i) of the definition "proceeds of disposition" in section 54. In general, that subparagraph refers to dividends that are deemed to be proceeds of disposition by paragraph 55(2)(*b*). By ignoring those proceeds, subparagraph (*d*)(i) ensures that, for the purpose of applying the exemption for certain related-person dividends in paragraph 55(3)(*a*), proceeds of disposition do not include subsections 84(2) and (3) dividends that are recharacterized as proceeds of disposition under paragraph 55(2)(*b*).

This amendment applies to dividends received after April 20, 2015.

**Applicable rules**

ITA

55(5)(*f*)

Paragraph 55(5)(*f*) of the Act allows a corporation to designate any portion of a taxable dividend received to be a separate taxable dividend for the purpose of section 55. The amount of the taxable dividend that is in excess of the designated dividend is also deemed to be a separate dividend.

A designation under paragraph (*f*) must be filed by a corporation receiving the taxable dividend in a return of income under Part I of the Act for the taxation year in which the dividend was received. Such a designation would be advantageous where the taxable dividend could otherwise exceed the corporate recipient's share of safe income of the payer corporation. By designating a separate dividend that is from safe income, the designation ensures that that portion of the whole dividend that is received is not recharacterized under section 55.

Paragraph (*f*) is amended in two respects. First, it is amended not to apply to the amount of a stock dividend to which new subsection 55(2.3) applies (new subsection 55(2.3) provides for an analogous rule that applies to such stock dividends). Second, amended paragraph (*f*) replaces the designation mechanism with an automatic rule that separates the amount of a taxable dividend into two separate taxable dividends.

- If a corporation receives a dividend and all or a portion of the dividend is a taxable dividend (the "taxable part"), new subparagraph (*f*)(i) deems a separate taxable dividend equal to the lesser of the taxable part of the dividend (clause (i)(A)); and the amount of safe income that could reasonably be considered to contribute to a capital gain that could be realized on a disposition at fair market value of the share on which the dividend is received (clause (i)(B)).

- New subparagraph (*f*)(ii) deems a separate taxable dividend equal to the amount, if any, by which the taxable part of the dividend exceeds the amount determined under subparagraph (*f*)(i) (i.e., the dividend out of safe income).

This change is consistent with the objective of subsection 55(2), which is an anti-avoidance rule directed against dividends paid in excess of safe income to unduly reduce a capital gain on any share, and is meant

- to ensure that a corporation's safe income is treated as a taxable dividend and is not recharacterized as a capital gain by subsection 55(2), and
- to prevent a conversion of what would otherwise be a distribution of safe income into a capital gain.

Subject to transitional relief, amended paragraph (*f*) applies to dividends received after April 20, 2015.

**Clause 6**

**Exemption for scholarships, fellowships, bursaries and prizes**

ITA
56(3)(*a*)(i)

Subsection 56(3) of the Act provides an annual exemption for scholarship, fellowship or bursary amounts received by an individual in connection with the individual's enrolment at a designated educational institution in a program in respect of which the individual may claim the education tax credit in the taxation year in which the amount was received, or for such amounts received in the year immediately preceding or following the year in which the individual could claim the education tax credit.

Consequential to the repeal of the education tax credit, subparagraph 56(3)(*a*)(i) is amended to remove the reference to an educational program in respect of which an amount may be deducted under subsection 118.6(2) by the taxpayer. It is replaced with a reference to an educational program in respect of which the taxpayer is a qualifying student, as defined in subsection 118.6(1). Therefore, the exemption for scholarships, fellowships, bursaries and prizes would continue to apply if the student meets the qualifying student definition and transitional rules are provided to ensure this continuity.

This amendment will apply to the 2017 and subsequent taxation years.

**Limitations of scholarship exemption**

ITA
56(3.1)(*b*)

Subsection 56(3.1) of the Act provides that a scholarship, fellowship or bursary ( an "award") is not considered to be received in connection with the taxpayer's enrolment in an educational program except to the extent that it is reasonable to conclude that the award is intended to support the taxpayer's enrolment in the program, having regard to all circumstances, including the terms and conditions that apply in respect of the award, the duration of the program and the period for which support is intended to be provided.

Consequential to the repeal of the education tax credit, paragraph 56(3.1)(*b*) is amended to remove the reference to an educational program in respect of which an amount may be deducted by reason of paragraph (*b*) of the description in B in subsection 118.6(2) by the taxpayer. It is replaced with reference to an educational program in respect of which the taxpayer is qualifying student because of subparagraph (*a*)(ii) of the definition of qualifying student in subsection 118.6(1). Transitional rules are provided to ensure continuity between the 2016 and 2017 taxation years.

This amendment will apply to the 2017 and subsequent taxation years.

**Clause 7**

**Definitions**

ITA

66.1(6)
Subsection 66.1(6) of the Act provides several definitions for the purposes of section 66.1, such as Canadian exploration expense, cumulative Canadian exploration expense, and Canadian renewable and conservation expense.

**"Canadian exploration expense"**

The definition "Canadian exploration expense" (CEE) in subsection 66.1(6) defines oil, gas, mining, and Canadian renewable and conservation expenses that qualify for treatment as CEE, which expenses are fully deductible in the taxation year incurred or in a future taxation year. Paragraph (*a*) of the definition of CEE describes expenses incurred in the oil and gas sector and paragraph (*f*) of the definition describes similar expenses incurred in the mining sector. The definition of CEE is amended to provide that costs associated with undertaking environmental studies and community consultations that are required in order to obtain an exploration permit are eligible for CEE treatment.

In this regard, the definition of CEE is amended in two respects.

First, paragraph (*a*) of the definition of CEE is reorganized and amended by adding two new subparagraphs. Subparagraph (i) refers to geological, geophysical and geochemical expenses, which are currently described in paragraph (*a*). Subparagraph (ii) adds a reference to an expense for environmental studies or community consultations including such an expense that is undertaken to obtain a right, license or privilege for the purpose of determining the existence, location, extent or quality of an accumulation of petroleum or natural gas in Canada.

Second, the preamble to paragraph (*f*) of the definition of CEE is amended to include an expense for environmental studies or community consultations including such an expense undertaken to obtain a right, license or privilege for the purpose of determining the existence, location, extent or quality of a mineral resource in Canada. The amendment also ensures that an expense for such studies and consultations will not be excluded from CEE because of subparagraph (*f*)(v) of the definition of CEE.

These amendments apply in respect of expenses incurred after February 2015.

**Clause 8**

**Ontario Electricity Support Program**

ITA
81(1)(*g.6*)

New paragraph 81(1)(*g.6*) excludes from income amounts received pursuant to section 79.2 of the *Ontario Energy Board Act 1998*, S.O. 1998, c.15, Sch B, as amended from time to time.

New paragraph 81(1)(*g.6*) applies to the 2016 and subsequent taxation years.

**Clause 9**

**Taxable dividend**

ITA
82(1)(*b*)

In general terms, subsection 82(1) of the Act requires an individual who receives a taxable dividend from a corporation resident in Canada to include in income an amount equal to the total of the dividend received and a gross-up amount. The individual is subject to tax on the amount and is then entitled to claim a dividend tax credit in respect of the amount under section 121.

In the case of a taxable dividend other than an eligible dividend (i.e., a taxable dividend that is a non-eligible dividend), paragraph 82(1)(*b*) requires an individual who receives a non-eligible dividend to add to the dividend a gross-up amount equal to 17% of the dividend for the 2016 taxation year. Clauses (*b*)(i)(B) and (C) reduce the gross-up percentage to 16% for the 2018 taxation year and to 15% for the 2019 and subsequent taxation years. Paragraph (*b*) is amended to provide that the 17% gross-up percentage will apply after 2016.

This amendment is made in conjunction with the amendment to paragraph 121(*a*) to adjust the corresponding dividend tax credit for non-eligible dividends and the amendment to subsection 125(1.1) that maintains the 2016 small business deduction rate for the 2017 and subsequent taxation years.

This amendment applies to the 2016 and subsequent taxation years.

**Clause 10**

**Definitions**

ITA
89(1)

Subsection 89(1) of the Act contains the definitions “capital dividend account” and “paid-up capital”, which are relevant for many purposes of the Act.

**“capital dividend account”**

The definition “capital dividend account” is part of a mechansim for allowing capital gains to flow through a private corporation without attracting an extra level of tax. The non-taxable amount of a capital gain realized by a private corporation is added to its capital dividend account from which capital dividends may be received tax-free by its shareholders.

Clauses (*a*)(i)(A) and (*a*)(ii)(A) of the definition "capital dividend account" provide that a corporation's capital gain or loss from the disposition of a property is computed for capital dividend purposes without reference to subparagraphs 52(3)(*a*)(ii) and 53(1)(*b*)(ii). Clauses (*a*)(i)(A) and (*a*)(ii)(A) are amended consequential to amendments made to subparagraphs 52(3)(*a*)(ii) and 53(1)(*b*)(ii). In general, no capital dividend election may be made in respect of a corporation's capital gain from disposing of shares to the extent that the gain arises because the cost of the shares does not include amounts described in new subclause 52(3)(*a*)(ii)(A)(II) and amended subparagraph 53(1)(*b*)(ii).

This amendment applies to dispositions made after April 20, 2015.

**"paid-up capital"**

Paragraph (*b*) of the "paid-up capital" definition defines "paid-up capital" in respect of a class of shares of the capital stock of a corporation. Subparagraph (*b*)(iii) of the definition provides that, after March 31, 1977, paid-up capital is to be calculated without reference to any provisions of the Act other than those listed in the subparagraph.

This subparagraph is amended to add a reference to new section 135.2, which contains certain rules regarding the computation of paid-up capital of certain shares of a class of the capital stock of a corporation resulting from the continuance of the Canadian Wheat Board.

This amendment is deemed to have come into force on July 1, 2015.

**Clause 11**

**Excluded Provisions**

ITA
94(4)(*b*)

Section 94 sets out rules that apply in determining whether paragraph 94(3)(*a*) deems a non-resident trust to be resident in Canada for a number of purposes. Subsection 94(4) provides that the deemed residence of a trust under paragraph 94(3)(*a*) does not apply for certain enumerated purposes.

Paragraph 94(4)(*b*) is amended to provide that paragraph 94(3)(*a*) will also not apply for purposes of the definition "eligible trust" in subsection 135.2(1). An eligible trust can satisfy the Canadian residence requirement set out in that definition only if it is factually resident in Canada.

For further information, see the commentary on section 135.2.

This amendment is deemed to have come into force on July 1, 2015, except that for taxation years that end before 2016 it is to be read without reference to the definition "qualified disability trust" in subsection 122(3).

## Clause 12

## Determination of certain components of foreign accrual property income

ITA
95(2)(*a.2*) to (*a.23*)

Paragraph 95(2)(*a.2*) of the Act includes in the income from a business other than an active business and thus the foreign accrual property income ("FAPI") of a foreign affiliate of a taxpayer resident in Canada, the income of the affiliate from the insurance of risks (including income from the reinsurance of risk) where the risks insured were in respect of

- a person resident in Canada
- property situated in Canada, or
- a business carried on in Canada.

The rule does not apply, however, where more than 90% of the gross premium income of the affiliate from the insurance (net of reinsurance ceded) of risks was derived from the insurance of other risks of persons with whom the affiliate deals at arm's length. Where the rule applies to the foreign affiliate of the taxpayer, the insurance of those risks is deemed to be a separate business other than an active business of the affiliate.

Paragraph 95(2)(*a.2*) is amended in two ways. First, it is modernized and restructured, by replacing its former subparagraphs (*a.2*)(i) to (iii) with references to the new defined term "specified Canadian risks", which are defined in new paragraph 95(2)(*a.23*) as the same risks that were previously described in those subparagraphs. It is further restructured by moving the existing rule into new subparagraphs (*a.2*)(i) and (ii), to accommodate the addition of the new rules in new subparagraphs (*a.2*)(iii) and (iv). The changes described above are merely structural and not substantive changes.

Second, paragraph (*a.2*) is amended by adding new rules in subparagraphs (*a.2*)(iii) and (iv). Subparagraph (*a.2*)(iii) provides that, to the extent income in respect of the ceding of Canadian risks is not already included in a foreign affiliate's income from a business other than an active business because of subparagraph (*a.2*)(i) or (ii), it is to be so included. For these purposes, an affiliate's income in respect of the ceding of Canadian risks includes (but is not limited to):

- income of the affiliate from services in respect of the ceding of specified Canadian risks, and
- the amount, if any, by which the fair market value of the consideration provided in respect of the ceding of the specified Canadian risks exceeds the affiliate's cost in respect of those specified Canadian risks.

Subparagraph (*a.2*)(iv) is analogous to subparagraph (*a.2*)(ii) and, where subparagraph (*a.2*)(iii) applies in respect of the ceding of specified Canadian risks, deems

- the ceding of those risks to be a separate business, other than an active business, carried on by the affiliate, and
- any income of the affiliate that pertains to or is incident to that business to be from a business other than an active business.

Paragraph 95(2)(*a.21*) is amended by adding references to the new defined term "specified Canadian risks". No substantive changes are made to this paragraph.

New paragraph 95(2)(*a.23*) defines the new term "specified Canadian risks", for purposes of paragraphs (*a.2*) and (*a.21*). These risks are the same ones that were previously described in subparagraphs (*a.2*)(i) to (iii), and the new definition replaces the description previously in those subparagraphs. Specifically, specified Canadian risks are defined as risks in respect of a person resident in Canada, a property situated in Canada or a business carried on in Canada.

These amendments apply to taxation years of a taxpayer that begin after April 20, 2015.

*Example: Paragraph 95(2)(a.2)(iii) and (iv)*

*Assumptions*

- FA1 is a non-resident corporation, all of the shares of which are owned by a corporation resident in Canada ("Canco").
- FA1 reinsures risks of an arm's length Canadian insurance company, which constitute "specified Canadian risks" (as defined in paragraph (*a.23*)), and pays a cash "ceding commission" to the Canadian insurance company.
- Subsequently, FA1 retrocedes these risks to an arm's length, non-resident reinsurer. As part of the same arrangement, the non-resident reinsurer also retrocedes foreign risks to FA1.
- Paragraph (*a.21*) does not apply to deem the foreign risks to be specified Canadian risks because, based on certain other facts concerning the arrangement, the condition in subparagraph (*a.21*)(ii) is not satisfied.

*Analysis*

To the extent income in respect of the ceding of the Canadian risks by FA1 to the non-resident reinsurer is not already included in FA1's income from a business other than an active business because of subparagraph (*a.2*)(i) or (ii), subparagraphs (*a.2*)(iii) and (iv) will apply in this case. In this regard, subparagraph (*a.2*)(iii) provides that, for these purposes, a foreign affiliate's income from the ceding of Canadian risks includes an amount equal to the difference between the fair market value of the consideration provided in respect of the ceding of the specified Canadian risks and the affiliate's cost in respect of those specified Canadian risks. Since, as part of the same arrangement under which the non-resident reinsurer reinsures the specified Canadian risks, FA1 also reinsures the foreign risks of the non-resident reinsurer, the portfolio of foreign risks constitute consideration provided by the non-resident reinsurer in respect of the ceding of the specified Canadian risks by FA1. Accordingly, FA1's income from the ceding of the specified Canadian risks is equal to the difference between the fair market value of the foreign risks and FA1's cost in respect of those specified Canadian risks (which costs may include the ceding commission paid by FA1 to the Canadian insurance company).

**Clause 13**

**Northern Residents Deductions**

ITA
110.7(1)(*b*)

The northern residents deduction in respect of living costs is provided in paragraph 110.7(1)(*b*) of the Act. The amount of this deduction is currently set at $8.25 for each day throughout which an individual resides in a prescribed area, and $8.25 for each day during which the taxpayer maintained and resided in a self-contained domestic establishment in a prescribed zone and for which no other person residing in that establishment claimed a housing deduction. The total deduction relating to the cost of living in a prescribed zone in a year is limited to 20% of the taxpayer's income for the year.

Both references to $8.25 in subparagraph (*b*)(ii) are replaced by references to $11.00, increasing the daily living cost amount by 1/3.

These amendments apply to the 2016 and subsequent taxation years.

**Clause 14**

**Where No Deduction Permitted**

ITA
112(2.3)

Subsection 112(2.3) of the Act denies an inter-corporate dividend deduction in respect of dividends received by a corporation in circumstances where the particular corporation has entered into a "dividend rental arrangement". The term "dividend rental arrangement" is defined in subsection 248(1) of the Act.

This subsection is amended for purposes of clarification to add a reference to a dividend rental arrangement of a partnership of which the particular corporation is directly or indirectly a member and of a trust under which the particular corporation is a beneficiary. This amendment ensures that the wording of this subsection is consistent with the definition "dividend rental arrangement", which provides that the "person" who enters into the arrangement may be a partnership or a person as otherwise defined under the Act, which includes a trust.

This subsection is further amended to clarify that an inter-corporate dividend deduction in respect of dividends received on a share is denied where there is, in respect of the share, a dividend rental arrangement. For example, where there is, in respect of a share, a dividend rental arrangement described in new paragraph (*c*) of the definition "dividend rental arrangement" in subsection 248(1) of the Act (*i.e.*, it involves a synthetic equity arrangement), the inter-corporate dividend deduction in respect of a dividend received on the share will be denied even if the acquisition of the share occurred several years before the person entered into the given synthetic equity arrangement.

Subsection 112(2.3) and the definitions "dividend rental arrangement" and "synthetic equity arrangement" apply on a dividend-per-dividend basis. In other words, for each dividend received on a share, the share must be tested to determine whether the definitions "synthetic equity arrangement" and "dividend rental arrangement" are met in respect of the share. Even if a share is in respect of a dividend rental arrangement for a given dividend, it may not be for a subsequent dividend.

For further information, see the commentary on new paragraphs (*c*) and (*d*) of the definition "dividend rental arrangement" in subsection 248(1) and on the new definition "synthetic equity arrangement" in that subsection.

This amendment applies to

- dividends that are paid or become payable after April 2017; and
- dividends that are paid or become payable at any time after October 2015 and before May 2017 on a share if, in general terms, all or any part of an agreement or arrangement, in respect of the share, is entered into, acquired, extended or renewed, or if the notional amount under an agreement is increased, after April 21, 2015 and before that time.

**Dividend Rental Arrangements – Exception**

ITA
112(2.31)

New subsection 112(2.31) of the Act provides an exception to the application of subsection 112(2.3) to a dividend received in a particular period if:

- the dividend rental arrangement is a dividend rental arrangement because of new paragraph (*c*) of the definition "dividend rental arrangement" in subsection 248(1) of the Act; and
- the taxpayer establishes that, throughout the particular period, no tax-indifferent investor or group of tax-indifferent investors, each member of which is affiliated with every other member, has all or substantially all of the risk of loss and opportunity for gain or profit in respect of the share because of the synthetic equity arrangement or a specified synthetic equity arrangement.

There is no exception to the application of subsection 112(2.3) if the dividend rental arrangement is a dividend rental arrangement because of paragraph (*d*) of the definition "dividend rental arrangement" in subsection 248(1).

A taxpayer is considered to have satisfied the condition described in new paragraph 112(2.31)(*b*) if it meets the requirements of paragraph (*a*), (*b*), (*c*) or (*d*) of new subsection 112(2.32) of the Act. Each of these paragraphs allows the taxpayer to satisfy this condition by obtaining certain specified representations from its counterparty or counterparties.

These representation rules apply only to shorter chains of derivatives as the veracity of representations made by parties in longer chains would not be practicably verifiable by the Minister of National Revenue.

For further information, see the commentary on new subsection 112(2.32), on new paragraphs (*c*) and (*d*) of the definition "dividend rental arrangement" in subsection 248(1) and on the new definition "synthetic equity arrangement" in that subsection.

This amendment applies to

- dividends that are paid or become payable after April 2017; and
- dividends that are paid or become payable at any time after October 2015 and before May 2017 on a share if, in general terms, all or any part of an agreement or arrangement, in respect of the share, is entered into, acquired, extended or renewed, or if the notional amount under an agreement is increased, after April 21, 2015 and before that time.

**Representations**

ITA
112(2.32)

New subsection 112(2.32) of the Act sets out rules under which a taxpayer is able to satisfy the condition in new paragraph 112(2.31)(*b*) by obtaining certain specified representations from its synthetic equity arrangement counterparty or counterparties. In its simplest form, these rules require the taxpayer to obtain two types of representations from its counterparty to the synthetic equity arrangement: (1) the counterparty is not a tax-indifferent investor, and (2) the counterparty does not reasonably expect to eliminate all or substantially all of its risk of loss and opportunity for gain or profit in respect of the share. The second type of representation is used as a substitute for a back-to-back anti-avoidance rule, and is intended to prevent a taxpayer from avoiding the application of the synthetic equity arrangement rules by interposing a counterparty between itself and a tax-indifferent investor. It is intended that the representations provide taxpayers and the Minister of National Revenue with additional certainty as to whether an intermediate counterparty has, in fact, entered into a specified synthetic equity arrangement with a tax-indifferent investor.

New subsection 112(2.32) requires that the representations obtained by the taxpayer be accurate. If a taxpayer relies on specified representations to claim an inter-corporate dividend deduction on a share throughout a particular period but these representations are later determined to be inaccurate by the Minister of National Revenue, then the exception under subsection 112(2.31) will not be considered to have applied to the arrangement. As such, the arrangement will be considered to be a dividend rental arrangement throughout that particular period.

New subsection 112(2.32) also requires that the representations be in writing. For example, these representations could be included in a confirmation under an ISDA Master Agreement between the parties, if one exists.

Paragraph (*a*) applies to a single synthetic equity arrangement. In such a situation, a taxpayer will be considered to have satisfied the condition described in new paragraph 112(2.31)(*b*) if it obtains accurate representations in writing from its counterparty, or from each member of a group comprised of all its counterparties each of which is affiliated with every other member (referred to in the subsection as an “affiliated counterparty”) that:

- it is not a tax-indifferent investor and it does not reasonably expect to become a tax-indifferent investor during the particular period; and
- it has not eliminated and it does not reasonably expect to eliminate all or substantially all of its risk of loss and opportunity for gain or profit in respect of the share during the particular period.

For these purposes, and elsewhere in new subsection 112(2.32), reasonable expectations are those of a reasonable person, based on all of the facts and circumstances at the time the synthetic equity arrangement is entered into in respect of the particular period. However, new subsection 112(2.33) of the Act provides that if, during the particular period, the reasonable expectations of the counterparty or affiliated counterparty change, then the particular period for which it has provided a representation is deemed to end at that time.

Paragraph (*b*) applies to back-to-back chains of agreements or arrangements where the final counterparty in the chain is either a single counterparty or an affiliated group of counterparties. In general terms, a taxpayer will obtain representations that its counterparty (or each of its affiliated counterparties) is not a tax-indifferent investor and has obtained representations similar to those provided by a single counterparty (or each affiliated counterparty) under paragraph (*a*). More specifically, a taxpayer will be considered to have satisfied the condition described in paragraph 112(2.31)(*b*) if it obtains accurate representations in writing from its counterparty, or from each affiliated counterparty, that:

- it is not a tax-indifferent investor and it does not reasonably expect to become a tax-indifferent investor during the particular period;
- it has entered into one or more specified synthetic equity arrangements that have the effect of eliminating all or substantially all of its risk of loss and opportunity for gain or profit in respect of the share in certain specified circumstances; and
- it has obtained accurate representations in writing from each if its specified counterparties, or from each member of the group of affiliated specified counterparties (as these terms are defined in this subsection) that:
  - it is not a tax-indifferent investor and it does not reasonably expect to become a tax-indifferent investor during the particular period; and
  - it has not eliminated and it does not reasonably expect to eliminate all or substantially all of its risk of loss and opportunity for gain or profit in respect of the share during the particular period.

Paragraph (*c*) applies to back-to-back chains of arrangements where the final counterparties in the chain deal at arm’s length with each other, and generally allows a taxpayer to indirectly obtain representations in respect of certain arrangements that would not have constituted synthetic equity arrangements had they been entered into directly by the taxpayer with the final counterparties. In such a situation, a taxpayer will be considered to have satisfied the condition described in new paragraph 112(2.31)(*b*) if it obtains accurate representations in writing from its counterparty, or from each affiliated counterparty, that:

- it is not a tax-indifferent investor and it does not reasonably expect to become a tax-indifferent investor during the particular period,
- it has entered into specified synthetic equity arrangements:
  - that have the effect of eliminating all or substantially all of its risk of loss and opportunity for gain or profit in respect of the share;
  - where no single specified counterparty or single group of affiliated specified counterparties has been provided with all or substantially all of the risk of loss and opportunity for gain or profit in respect of the share; and

    - where each specified counterparty or affiliated specified counterparty deals at arm's length with each other; and
- it has obtained accurate representations in writing from each of its specified counterparties, or from each of its affiliated specified counterparties, that:
    - it is a person resident in Canada and it does not reasonably expect to cease to be resident in Canada during the particular period; and
    - it has not eliminated and it does not reasonably expect to eliminate all or substantially all of its risk of loss and opportunity for gain or profit in respect of the share during the particular period.

Paragraph (*d*) allows two or more related Canadian resident parties in a chain of derivatives, that includes the taxpayer, to be effectively counted as one party for the purposes of new subsection 112(2.32). This objective is realized by allowing the last party in the synthetic equity arrangement chain to obtain the representations required by paragraphs (*a*), (*b*) or (*c*). In order for the taxpayer to rely on paragraph (*d*), the last party in the synthetic equity arrangement chain that has entered into one or more specified synthetic equity arrangements that have the effect of eliminating all or substantially all of its risk of loss and opportunity for gain or profit in respect of a share must have entered into those specified synthetic equity arrangements only with a counterparty or counterparties that deal at arm's length with it. The term "synthetic equity arrangement chain" is defined separately in subsection 248(1) of the Act.

For further information, see the commentary on new subsection 112(2.31), new paragraphs (*c*) and (*d*) of the definition "dividend rental arrangement" in subsection 248(1) and the new definition "synthetic equity arrangement" in that subsection.

This amendment applies to

- dividends that are paid or become payable after April 2017; and
- dividends that are paid or become payable at any time after October 2015 and before May 2017 on a share if, in general terms, all or any part of an agreement or arrangement, in respect of the share, is entered into, acquired, extended or renewed, or if the notional amount under an agreement is increased, after April 21, 2015 and before that time.

**End of Particular Period**

ITA
112(2.33)

New subsection 112(2.33) of the Act provides that if, at a time during a particular period, a counterparty, specified counterparty, affiliated counterparty or affiliated specified counterparty reasonably expects to become a tax-indifferent investor or, if it has provided a representation described by subparagraph 112(2.32)(*a*)(ii) or clause 112(2.32)(*b*)(iii)(B) or (*c*)(iii)(B) in respect of a share, to eliminate all or substantially all of its risk of loss and opportunity for gain or profit in respect of the share, the particular period for which it has provided a representation in respect of the share is deemed to end at that time. New subsection 112(2.33) is intended to ensure that the exception in subsection 112(2.31) is only available for the period during which the representations that have been provided remain accurate.

For further information, see the commentary on new subsection 112(2.32).

This amendment applies to

- dividends that are paid or become payable after April 2017; and
- dividends that are paid or become payable at any time after October 2015 and before May 2017 on a share if, in general terms, all or any part of an agreement or arrangement, in respect of the share, is entered into, acquired, extended or renewed, or if the notional amount under an agreement is increased, after April 21, 2015 and before that time.

**Interpretation**

ITA
112(2.34)

New subsection 112(2.34) of the Act provides that, for greater certainty, each reference in new subsection 112(2.32) of the Act to a “counterparty”, a “specified counterparty”, an “affiliated counterparty” or an “affiliated specified counterparty” is to be read as referring only to a person or partnership that obtains all or any portion of the risk of loss or opportunity for gain or profit in respect of a share. New subsection 112(2.34) effectively clarifies that the representations described in subsection 112(2.32) do not have to be obtained from certain contractual parties that may be involved in an equity derivative transaction, such as third-party calculation agents, if they do not obtain any economic exposure in respect of the share.

This amendment applies to

- dividends that are paid or become payable after April 2017; and
- dividends that are paid or become payable at any time after October 2015 and before May 2017 on a share if, in general terms, all or any part of an agreement or arrangement, in respect of the share, is entered into, acquired, extended or renewed, or if the notional amount under an agreement is increased, after April 21, 2015 and before that time.

**Synthetic Equity Arrangements – Ordering**

ITA
112(10)

New subsection 112(10) of the Act is intended to ensure that a person or partnership cannot circumvent the application of new paragraph (*c*) of the definition “dividend rental arrangement” in subsection 248(1) of the Act and the dividend stop-loss rules in section 112 of the Act by systematically matching synthetic equity arrangements with more recently acquired shares in a way that leaves earlier acquired shares avoiding the dividend rental arrangement rules and, where the 365-day ownership requirement is met, the dividend stop-loss rules on a subsequent disposition of the shares.

Subsection 112(10) provides that, for the purposes of the listed provisions in the stop-loss rules, if a synthetic equity arrangement is in respect of a number of shares that are identical properties (referred to in the subsection as “identical shares”) that is less than the total number of such identical shares owned by a person or partnership at that time and in respect of which there is no other synthetic equity arrangement, then the synthetic equity arrangement is deemed to be in respect of those identical shares in the order in which the person or partnership acquired them.

*Example*

*A taxable Canadian corporation (the "Taxpayer") owns 500 shares of ABC Co. These shares were acquired at the following dates:*

- *100 of the shares were acquired on September 1, 2015;*
- *300 of the shares were acquired on December 1, 2015; and*
- *100 of the shares were acquired on March 1, 2016.*

*On July 1, 2016, the Taxpayer enters into a six-month cash-settled total return swap that references 100 shares of ABC Co. On January 1, 2017, on termination of the swap, the Taxpayer actually disposes of the 500 shares of ABC Co.*

*During the term of the swap, the Taxpayer will have a synthetic equity arrangement in respect of 100 shares of ABC Co. Since the Taxpayer owns a total of 500 shares of ABC Co., subsection 112(10) will apply to provide that the synthetic equity arrangement will be matched with the shares of ABC Co. in the order in which the Taxpayer acquired those shares (i.e., on a first-in-first-out ("FIFO") basis). As such, the shares of ABC Co. referenced under the swap will be matched, on a FIFO basis, with the 100 shares of ABC Co. that were acquired on September 1, 2015.*

For further information, see the commentary on new paragraphs (*c*) and (*d*) of the definition "dividend rental arrangement" in subsection 248(1) and on the new definition "synthetic equity arrangement" in that subsection.

This amendment is deemed to have come into force on April 22, 2015.

**Clause 15**

**Children's Arts Tax Credit**

ITA
118.031

Section 118.031 of the Act provides a non-refundable tax credit in respect of eligible art expenses (to a maximum of $500) paid in a taxation year for each qualifying child of the taxpayer, multiplied by the appropriate percentage for that year (meaning the lowest percentage referred to in subsection 117(2), which is 15% for 2016).

The limit on eligible art expenses in subsection 118.031(2) is decreased to $250 for the 2016 taxation year. Section 118.031 is repealed for the 2017 and subsequent taxation years.

**Clause 16**

**Definitions**

ITA
118.6(1)

Subsection 118.6(1) of the Act provides for various education-related definitions for purposes of the education and textbook credits, as well as the tuition credit, the child care expense deduction, the disability supports deduction and more.

"**Qualifying educational program**"

Paragraph (*b*) of the definition "qualifying educational program" is amended to include a benefit received by a student because of a loan made to the student in accordance with the requirements of the *Apprentice Loans Act*, consequential to the introduction of that Act. The amendment ensures that the receipt by a student of assistance under the *Apprentice Loans Act* will not be taken into account in determining whether the educational program in which the student is enrolled is a qualifying educational program, for purposes of the education tax credit (prior to its repeal), the scholarship exemption under subsection 56(3) and Lifelong Learning Plan under section 146.02. This amendment is deemed to come into force on January 2, 2015.

ITA
118.6(1)
**Definitions**

**"Qualifying Student"**

A new definition "qualifying student" (in respect of a month in a taxation year) is added to refer to an individual who is enrolled for at least one month in the taxation year in a qualifying education program as a full-time student at a designated educational institution or is enrolled at a designated education institution in a specified education program (with not less than 12 hours in the month spent on courses in the program). In order to be a qualifying student, the individual must provide proof of enrollment if and when requested by the Minister. Also, with regards to an individual who is enrolled in a program described in subparagraph (*a*)(ii) of the definition designated educational institution, the individual must have attained the age of 16 years before the end of the year and be enrolled in the program to obtain or improve skills for an occupation in order to meet the requirements of a "qualifying student".

This change is made consequential to the repeal of the education tax credit. The new defined term generally refers to a person who would have been entitled to deduct an amount under subsection 118.6(2). For more information, see the amendments to subparagraph 56(3)(*a*)(i), paragraph 56(3.1)(*b*) and subsections 118.6(3) and 146.02(1).

The definition of "qualifying student" applies to the 2017 and subsequent taxation years.

**Education Tax Credit**

ITA
118.6(2)

Subsection 118.6(2) of the Act provides the formula for calculating the amount of the education tax credit of an individual. This subsection is repealed for the 2017 and subsequent taxation years.

**Textbook Tax Credit**

ITA
118.6(2.1)

Subsection 118.6(2.1) of the Act provides to an individual a non-refundable tax credit in respect of textbooks for each month in a taxation year in which an individual was entitled to claim an education tax credit under subsection 118.6(2).This subsection is repealed for the 2017 and subsequent taxation years.

**Students eligible for the disability tax credit**

ITA
118.6(3)

Subsection 118.6(3) of the Act applies for the purpose of calculating amounts deductible under subsections 118.6(2) and (2.1). Subsection 118.6(3) extends full-time student eligibility for the education tax credit to certain part-time students, where the student is eligible for the disability tax credit or cannot be enrolled on a full-time basis because of the student's mental or physical impairment.

Consequential to the repeal of the education and textbook tax credits, subsection 118.6(3) is amended to apply for purposes of subparagraph (*a*)(i) of the new definition "qualifying student" (generally, a person who would have been entitled to deduct an amount under subsection 118.6(2)).

This amendment applies to the 2017 and subsequent taxation years.

**Clause 17**

**Unused Tuition, textbook and education tax credits**

ITA
118.61(1)

Subsection 118.61(1) of the Act provides a formula for the calculation of a student's unused tuition, education and textbook tax credits that may be carried forward to future years.

Consequential to the repeal of the education and textbook tax credits, the description of B in subsection 118.61(1) is amended by removing the reference to section 118.6 and the description of E is amended to remove the reference to the textbook and education tax credits.

These amendments apply to the 2017 and subsequent taxation years.

**Change of appropriate percentage**

ITA
118.61(4)

Subsection 118.61(4) of the Act adjusts the unused tuition, education and textbook tax credit at the end of the immediately preceding taxation year in circumstances where the "appropriate percentage" applicable in the current taxation year is different from the "appropriate percentage" applicable in the immediately preceding taxation year. Subsection 118.61(4) is amended to remove references to 118.6(2) and 118.6(2.1) consequential to the repeal of the education and textbook tax credits.

This amendment applies to the 2017 and subsequent taxation years.

**Clause 18**

**Transfer of unused credits to spouse**

ITA
118.8

Subsection 118.8 of the Act provides a formula that governs the amount of certain unused personal income tax credits that can be transferred to a taxpayer from a spouse or common-law partner.

Consequential to the repeal of the education and textbook tax credits, the description of A of the formula in section 118.8 is amended to remove the references made to the textbook and education tax credits and subparagraph (*b*)(i) of the description of C is amended to remove the reference to section 118.6.

These amendments apply to the 2017 and subsequent taxation years.

**Clause 19**

**Tuition, textbook and education tax credits transferred**

ITA
118.81

Section 118.81 of the Act provides for the calculation of the tuition, education, and textbook tax credits that may be transferred under section 118.8 to a student's spouse or common-law partner or under section 118.9 to a parent or grandparent.

Consequential to the repeal of the education and textbook tax credits, the preamble to section 118.81 is amended to remove the references to the textbook and education tax credits. Further, subparagraph (i) of the description of A in paragraph 118.81(*a*) is amended to remove the reference to section 118.6. These amendments apply to the 2017 and subsequent taxation years.

**Clause 20**

**Transfer to parent or grandparent**

ITA
118.9

Section 118.9 of the Act provides for the transfer of a student's tuition, education and textbook tax credits to the student's parent or grandparents. Consequential to the repeal of the education and textbook tax credits, section 118.9 is amended to remove reference to these two credits.

This amendment applies to the 2017 and subsequent taxation years.

**Clause 21**

**Part-year residents**

ITA
118.91(*b*)(i)

Section 118.91 of the Act provides rules with respect to non-refundable tax credits available to individuals who reside in Canada for only part of a taxation year. Subparagraph 118.91(*b*)(i) is amended to remove reference to section 118.6 and subsection 118.6(2.1), consequential to the repeal of the education and textbook tax credits.

This amendment applies to the 2017 and subsequent taxation years.

**Clause 22**

**Ordering of credits**

ITA
118.92

Section 118.92 of the Act provides that tax credits allowed in computing an individual's tax payable for a taxation year are to be applied in a specific order.

For the 2016 taxation year, this section is amended to remove a reference to section 119.1, consequential to the repeal of the income splitting credit.

For the 2017 and subsequent taxation years, this section is amended to remove references to sections 118.031 and 118.6, consequential to the repeal of the children's arts credit and the education and textbook credits.

**Clause 23**

**Tax payable by non-residents**

ITA
118.94

Section 118.94 of the Act provides rules with respect to non-refundable tax credits available to individuals who, at any time in a taxation year, did not reside in Canada. Subject to a special rule in section 217, such individuals are allowed to claim certain non-refundable credits for a taxation year only where all or substantially all of their income for the taxation year is included in computing their taxable income in Canada. This section is amended to remove reference to section 118.6, consequential to the repeal of the education and textbook tax credits. This amendment applies to the 2017 and subsequent taxation years.

**Clause 24**

**Credits in year of bankruptcy**

ITA
118.95(a)

Section 118.95 of the Act governs the rules applicable to credits in the year of bankruptcy. Paragraph 118.95(*a*) is amended to remove reference to section 118.6, consequential to the repeal of the education and textbook tax credits. This amendment applies to the 2017 and subsequent taxation years.

**Clause 25**

**Family Tax Cut**

ITA
119.1

Section 119.1 of the Act provides a non-refundable income splitting tax credit for qualifying couples with at least one child under the age of 18.

Section 119.1 is repealed as of January 1, 2016.

**Clause 26**

**Deduction for Taxable Dividends – Dividend Tax Credit**

ITA
121

In general terms, section 121 of the Act allows an individual who receives a taxable dividend from a corporation resident in Canada to deduct a dividend tax credit from the tax otherwise payable for the year by the individual in respect of the amount of the dividend that is included in the individual's income (which amount is determined under subsection 82(1)).

Paragraph 121(*a*) provides the dividend tax credit that applies to a taxable dividend other than an eligible dividend (i.e., a taxable dividend that is a non-eligible dividend) received by an individual. In respect of a non-eligible divided, the dividend tax credit for 2016 is 21/29 of the gross-up amount of the dividend that is included in the individual's income under paragraph 82(1)(*b*). Subparagraphs (*a*)(ii) and (iii) reduce this fraction to 20/29 for the 2017 and 2018 taxation years and to 9/13 for the 2019 and subsequent taxation years. Paragraph (*a*) is amended to provide that this dividend tax credit will also apply after 2016.

This amendment is made in conjunction with the amendment to paragraph 82(1)(*b*) to adjust the gross-up amount of a non-eligible dividend that must be included in the income of an individual and the amendment to subsection 125(1.1) that maintains the 2016 small business deduction rate after 2016.

This amendment applies to the 2016 and subsequent taxation years.

**Clause 27**

The heading "Canada Child Tax Benefit" for subdivision A.1 of Part I, Division E of the Act is replaced by "Canada Child Benefit" consequential to the introduction of the Canada child benefit.

**Clause 28**

**Eligible individual - definitions**

ITA
122.6

Paragraph (*e*) of the definition "eligible individual" in section 122.6 of the Act describes certain residency requirements that must be met in order for an individual to be eligible for the new Canada child benefit. New subparagraph (*e*)(v) is added to provide that individuals who are Indians under the *Indian Act* and residents of Canada for tax purposes are eligible to receive the Canada child benefit where all other eligibility requirements are met.

This amendment applies as of July 1, 2016.

**Clause 29**

**Canada child benefit**

ITA
122.61(1)

Subsection 122.61(1) of the Act is amended to introduce the new Canada child benefit (CCB) which replaces the existing Canada child tax benefit and the universal child care benefit.

Subsection 122.61(1) provides for the calculation of the CCB. An eligible individual is entitled under subsection 122.61(1) to a maximum annual CCB of $6,400 per child under the age of 6 and $5,400 per child aged 6 through 17. On the portion of adjusted family net income between $30,000 and $65,000, the benefit will be phased out at a rate of 7% for a one-child family, 13.5% for a two-child family, 19% for a three-child family and 23% for families with four or more children. Where adjusted family net income exceeds $65,000, remaining benefits will be phased out at rates of 3.2% for a one-child family, 5.7% for a two-child family, 8% for a three-child family and 9.5% for families with four or more children, on the portion of income above $65,000. The CCB will be paid in equal monthly instalments.

The national child benefit supplement will remain (reflected in the descriptions of R and C) as a subcomponent of the computation of the CCB for the period July 1, 2016 to June 30, 2017, after which the national child benefit will be repealed.

The CCB will provide an additional amount of up to $2,730 per child eligible for the disability tax credit. This benefit will be phased out at a rate of 3.2% cent for families with one eligible child and 5.7% cent for families with more than one eligible child, on adjusted family net income in excess of $65,000, effective July 1, 2016. This additional amount will be included in the CCB payments made to eligible families.

This amendment applies as of July 1, 2016.

**Annual adjustment**

ITA
122.61(5)

Subsection 122.61(5) of the Act provides for the indexing of dollar amounts in subsection (1). Subsection 122.61(5) is repealed as of July 1, 2016

**Rounding**

ITA
122.61(7)

Subsection 122.61(7) of the Act contains rules for rounding amounts determined under subsection (5). Subsection 122.61(7) is repealed as of July 1, 2016

**Clause 30**

**Extension for notices**

ITA
122.62(2)

Subsection 122.62(2) of the Act provides that the Minister may extend the period for filing the notice required to be filed by subsection 122.62(1) for a person to be considered an eligible individual in respect of a particular qualified dependent. Subsection 122.62(2) is amended to provide that the Minister may grant an extension of time to file the notice required by subsection 122.62(1) for a particular month only if the request for the extension is made on or before the day that is 10 years after the beginning of that month.

This amendment applies to requests made after June 2016.

**Clause 31**

**Agreement**

ITA
122.63

Section 122.63 of the Act is repealed as of July 1, 2016 and will be re-enacted as of July 1, 2017.

**Agreement**

ITA
122.63(1)

Subsection 122.63(1) of the Act permits the Minister of Finance to enter into an agreement with a province to modify the Canada child benefit with respect to residents of that province.

Subsection 122.63(1) is re-enacted as of July 1, 2017.

**Agreement**

ITA
122.63(2)

Subsection 122.63(2) of the Act stipulates that the Canada child benefit amount may be modified by such agreement only on the basis of the number or age (or both) of qualified dependants and that, in all cases, the modified amount may not be less than 85% that would otherwise apply.

Subsection 122.63(2) is re-enacted as of July 1, 2017.

**Agreement**

ITA
122.63(3)

Subsection 122.63(3) provides that, where the total amounts paid to the residents of a province with which an agreement was entered into exceed by more than 1% the total of the amounts that would have been paid in the absence of such an agreement, the agreement must provide for the reimbursement of the excess by the province to the Government of Canada.

Subsection 122.63(3) is re-enacted as of July 1, 2017.

**Clause 32**

**Child Fitness Tax Credit**

ITA
122.8

Section 122.8 of the Act provides an eligible individual with a refundable tax credit in respect of eligible fitness expenses (to a maximum of $1,000) paid in a taxation year in respect of each qualifying child of the individual, multiplied by the appropriate percentage for that year (meaning the lowest percentage referred to in subsection 117(2), which is 15% in 2016).

The limit on eligible fitness expenses is decreased to $500 for the 2016 taxation year. Section 122.8 is repealed for the 2017 and subsequent taxation years.

**Clause 33**

**School Supplies Tax Credit**

ITA
122.9

New section 122.9 of the Act introduces a refundable Teacher and Early Childhood Educator School Supplies Tax Credit to recognize the cost of supplies incurred by teachers and early childhood educators, at their own expense, for the purpose of teaching or otherwise enhancing students' learning in the classroom or learning environment. An individual who is an eligible educator that claims this credit in his or her return of income for the year is deemed to have paid on account of tax payable under Part I for the year, the amount determined in respect of up to $1,000 of eligible supplies expenses paid in a taxation year by the eligible educator in order to purchase teaching supplies, multiplied by the appropriate percentage for that year (meaning the lowest percentage referred to in subsection 117(2), which is 15% for 2016).

New section 122.9 applies to the 2016 and subsequent taxation years.

**Definitions**

ITA
122.9(1)

New subsection 122.9(1) of the Act sets out definitions and rules that apply for the purpose of the School Supplies Tax Credit.

An “eligible educator” is an individual who is employed, at an elementary or secondary school, or a regulated childcare facility, as a teacher or an early childhood educator. The individual must hold a valid and recognized certificate, licence, permit or diploma in teaching or early childhood education in the Canadian province or territory in which the individual is employed.

An “eligible supplies expense” for a taxation year is an amount paid by an eligible educator in the year for teaching supplies that were purchased by the eligible educator for the purpose of the purpose of teaching or facilitating the students’ learning, and that were directly consumed or used in an elementary or secondary school or in a regulated child care facility in the performance of the duties of the eligible educator’s employment. The eligible supplies expense does not include any amounts to the extent that the eligible educator is entitled to receive reimbursement, allowance or any other form of assistance in respect of the amount paid.

A “return of income” is the return (other than a return filed under subsection 70(2) or 104(23), paragraph 128(2)(*e*) or subsection 150(4)) that is required to be filed for the taxation year by an individual or that would be required to be filed for the taxation year if the individual had tax payable under Part I of the Act for the taxation year. The School Supplies Tax Credit is only available to an eligible educator in a taxation year who has filed a return of income for the year.

“Teaching supplies” consist of consumable supplies and prescribed durable goods. The list of prescribed durable goods is provided in section 9600 of the *Income Tax Regulations*.

**Deemed overpayment**

ITA
122.9(2)

New subsection 122.9(2) of the Act provides a formula to determine the amount that an eligible educator claiming the School Supplies Tax Credit in his or her return of income for the year is deemed to have paid on account of tax payable under Part I for the year. The amount of this deemed overpayment of tax is calculated by applying the appropriate percentage for the taxation year (meaning the lowest percentage referred to in subsection 117(2), which is 15% in 2016) to the lesser of $1,000 and the total of all amounts each of which is an eligible supplies expense of the eligible educator for the year. The amount of the deemed overpayment is nil if the eligible educator fails to provide the certificate referred to in 122.9(3), as and when requested by the Minister.

**Certificate**

ITA
122.9(3)

New subsection 122.9(3) of the Act provides that, if the Minister of National Revenue so demands, an individual claiming the School Supplies Tax Credit is required to provide to the Minister a written certificate from the employer, or a delegated official of the employer, attesting to amounts paid as eligible supplies expense of the eligible educator for the year. The certification of eligible supplies expense by the employer (or delegated official of the employer, e.g., a school principal) provides confirmation that the teaching supplies were purchased by the eligible educator for the purpose of teaching and facilitating students' learning and directly consumed or used in an elementary or secondary school or regulated child care facility in the performance of the eligible educator's employment, and to confirm to the best of the employer or delegated official's knowledge, that the eligible educator was not entitled to a reimbursement, allowance or any other form of assistance in respect of the amounts claimed by purposes of the tax credit.

**Effect of bankruptcy**

ITA
122.9(4)

New subsection 122.9(4) of the Act applies in computing the School Supplies Tax Credit where an eligible educator becomes bankrupt in a particular calendar year. This subsection provides that, notwithstanding subsection 128(2), any reference to the taxation year of the eligible educator is deemed to be a reference to the calendar year. The effect is that the last taxation year of the individual that ends in the calendar year is the only year in respect of which the eligible educator may claim a School Supplies Tax Credit. However, expenditures that are incurred throughout the calendar year by the eligible educator will be considered in determining the amount of the credit.

**Part-year residents**

ITA
122.9(5)

New subsection 122.9(5) of the Act applies in computing the School Supplies Tax Credit where an eligible educator is resident in Canada throughout only part of a taxation year. The combined effect of subparagraphs 122.9(5)(*a*)(i) and (ii) is to divide the taxation year into two parts. Subparagraph (*a*)(i) allows the credit in subsection (2) in respect of eligible supplies expenses incurred while the eligible educator was not a resident of Canada, as if that portion of the year were a separate taxation year. Subparagraph (*a*)(ii) allows the credit under subsection (2) in respect of qualifying expenditures incurred while the eligible educator was a resident of Canada. In addition, paragraph 122.9(5)(*b*) ensures that the total amount available under paragraph (*a*) in a taxation year does not exceed the amount that could be claimed if the eligible educator were resident in Canada throughout the year.

**Non-residents**

ITA
122.9(6)

New subsection 122.9(6) of the Act does not allow an eligible educator to claim the School Supplies Tax Credit under subsection (2) in a taxation year if they were not resident in Canada at any time during the year, unless all or substantially all of the eligible educator's income for the year is included in computing their taxable income earned in Canada for the year.

**Clause 34**

**Small Business Deduction**

ITA
125

For the purpose of computing the small business deduction under section 125 of the Act, a corporation's small business deduction rate for a taxation year is determined under subsection 125(1.1). The small business deduction rate is 17.5 % for 2016, 18 % for 2017, 18.5 % for 2018 and 19 % after 2018. Subsection 125(1.1) is amended to provide that the 17.5% deduction rate will be maintained after 2016.

This amendment is made in conjunction with the amendment to paragraph 82(1)(*b*) to adjust the gross-up amount of taxable dividends that are not eligible dividends that must be included in the income of an individual and the amendment to paragraph 121(*a*) to adjust the corresponding dividend tax credit for such dividends.

This amendment applies to the 2016 and subsequent taxation years. The small business deduction rate is prorated for taxation years of a corporation that overlap 2015 and 2016.

**Clause 35**

**Investment Tax Credit**

ITA
127

Section 127 of the Act permits deductions in computing tax payable in respect of, amongst other items, the investment tax credit (ITC).

**Definitions**

ITA
127(9)

Subsection 127(9) of the Act provides various definitions relevant for the purpose of calculating the ITC of a taxpayer.

**"flow-through mining expenditure"**

The definition "flow-through mining expenditure" in subsection 127(9) defines the expenses (eligible expenses) that qualify for the 15% ITC in respect of specified surface "grass-roots" mineral exploration. Under the existing definition, the credit is available only in respect of eligible expenses renounced under a flow-through share agreement made after March 2015 and before April 2016.

The definition is amended to include eligible expenses incurred by a corporation after March 2016 and before 2018, where the expenses are incurred under a flow-through share agreement entered into after March 2016 and before April 2017.

**Clause 36**

**Labour-sponsored funds tax credit limit**

ITA
127.4(5)(*a*)

Subsection 127.4(5) of the Act sets out the calculation of an individual's labour-sponsored funds tax credit limit for a taxation year. For the 2016 taxation year, the limit is the lesser of $250 and the total of the individual's labour-sponsored funds tax credits in respect of original acquisitions (as defined in subsection 127.4(1)) in the year or in the first 60 days of the following year of approved shares, except that original acquisitions reflected in the individual's claim under subsection 127.4(2) for the preceding taxation year are ignored.

The $250 limit described in paragraph 127.4(5)(*a*) for the 2016 taxation year is consistent with the phase out of the labour-sponsored funds tax credit and corresponds with a 5% tax credit on original acquisitions of $5,000 of prescribed labour-sponsored venture capital corporation (LSVCC) shares, which qualify as approved shares. The labour-sponsored funds tax credit is scheduled to be eliminated for the 2017 taxation year and consequentially subsection 127.4(5) is currently scheduled to be repealed effective for the 2017 and subsequent taxation years.

These amendments reinstate the 15% labour-sponsored funds tax credit for prescribed LSVCCs other than prescribed LSVCCs that are prescribed LSVCCs solely because they are registered LSVCCs (described as provincially prescribed LSVCCs for the purposes of these notes). The phase out of the labour sponsored funds credit for LSVCCs that are prescribed solely because they are federally registered LSVCCs (described as federally registered LSVCCs for the purposes of these notes) is maintained.

Paragraph 127.4(6)(*a*) is amended for 2016 in order to maintain the effective $5,000 limit on the original acquisition of prescribed LSVCC shares. Provincially prescribed LSVCCs benefit from a 15% tax credit and federally registered LSVCCs are entitled to a 5% tax credit in 2016. Where an investor acquires shares of both provincially prescribed LSVCCs and federally prescribed LSVCCs, the formula maximizes the value of the tax credits within the $5,000 expenditure limit.

Specifically, paragraph 127.4(6)(*a*) is amended to introduce the formula:

$$0.15 \times A + 0.05 \times B$$

- where A is the lesser of
  - $5,000, and
  - the total of all amounts each of which is the net cost of the original acquisition of provincially prescribed LSVCCs, and
- B is the lesser of
  - the amount by which $5,000 exceeds the total of all amounts each of which is the net cost of the original acquisition of provincially prescribed LSVCCs, and
  - the total of all amounts each of which is the net cost of the original acquisition of shares of federally registered LSVCCs.

This formula applies to the 2016 taxation year. It is replaced for the 2017 and subsequent taxation years by a limit of $750, which is available only in respect of provincially prescribed LSVCCs due to the elimination of the tax credit for federally registered LSVCCs for 2017 and subsequent taxation years. However, original acquisitions of federally registered LSVCC shares in the first 60 days of 2017 will continue to be eligible for the labour-sponsored funds tax credit for 2016.

**Labour-sponsored funds tax credit**

ITA
127.4(6)

Subsection 127.4(6) of the Act sets out the calculation of an individual's labour-sponsored funds tax credit in respect of an original acquisition (as defined in subsection 127.4(1)) of an approved share of a prescribed LSVCC for a taxation year. Consistent with the phase out of the labour-sponsored funds tax credit, the tax credit is equal to 5% of the net cost to the individual (or to a registered retirement savings plan or tax-free savings account of the individual) in respect of the original acquisition of the share by the individual or trust for the 2016 taxation year. Subsection 127.4(6) is to be repealed effective for the 2017 and subsequent taxation years.

Paragraphs 127.4(6)(*a*) and (*a.1*) are replaced by paragraphs 127.4(6)(*a*) to (*a.2*). Paragraph (*a*) restores the tax credit to 15% of the net cost to the individual (or to a registered retirement savings plan or tax-free savings account of the individual) in respect of the original acquisition of the share by the individual or trust if the approved share is a provincially prescribed LSVCC. Paragraphs (*a.1*) and (*a.2*) maintain the phase out for federally registered LSVCCs providing a tax credit equal to 5% for the original acquisition of approved shares of federally registered LSVCCs for the 2016 taxation year and eliminating the credit for taxation years after 2016.

The labour-sponsored funds tax credit that applies to a given labour-sponsored funds tax credit deduction claim will be based on the taxation year that the labour sponsored funds tax credit is claimed, rather than the year in which an approved share is acquired. Therefore, an original acquisition of an approved share of a federally registered LSVCC that takes place in the first 60 days of 2017, but is claimed in respect of the 2016 taxation year, will be eligible for the 5% labour-sponsored funds tax credit.

New paragraphs 127.4(6)(*a*) to (*a.2*) apply to the 2016 and subsequent taxation years.

**Clause 37**

**Where individual bankrupt**

ITA
128(2)(*e*)(iii)(A)

Subsection 128(2) of the Act contains a number of special rules that apply in case of personal bankruptcy. For the 2016 and subsequent taxation years, clause 128(2)(*e*)(iii)(A) is amended to remove the reference to section 119.1, consequential to the repeal of the income splitting tax credit for couples with children under 18. For the 2017 and subsequent taxation years, clause

128(2)(e)(iii)(A) is further amended to remove the reference to section 118.6, consequential to the repeal of the education and textbook tax credits.

**Clause 38**

**Continuance of the Canadian Wheat Board**

ITA
135.2

New section 135.2 of the Act contains rules that apply in respect of the continuance of the Canadian Wheat Board under the *Canada Business Corporations Act*.

New subsection 135.2(1) of the Act contains definitions for the application of section 135.2. New subsections 135.2(2) to (14) provide specific rules that apply in respect of the continuance of the Canadian Wheat Board. New subsections 135.2(15) and (16) concern filing requirements in respect of the continuance.

New section 135.2 is deemed to have come into force on July 1, 2015, except that before December 31, 2015 a reference to an individual's graduated rate estate is to be read as a reference to the individual's estate.

**Definitions**

ITA
135.2(1)

New subsection 135.2(1) of the Act contains definitions for the application of section 135.2.

**"application for continuance"**

In general terms, the definition "application for continuance" means the application for continuance under the *Canada Business Corporations Act* that the Canadian Wheat Board (a corporation referred to in subsection 4(1) of the *Canadian Wheat Board (Interim Operations Act)* before that Act's repeal) that was approved by the Minister of Agriculture and Agri-Food under Part III of the *Marketing Freedom for Grain Farmers Act*.

**"Canadian Wheat Board"**

The definition "Canadian Wheat Board" means the corporation referred to in subsection 4(1) of the *Canadian Wheat Board (Interim Operations Act)* before that act's repeal) that is continued under the *Canada Business Corporations Act* pursuant to the application for continuance (see definition "application for continuance").

**"Canadian Wheat Board continuance"**

In general terms, the definition "Canadian Wheat Board continuance" means the series of transactions or events that includes the transactions or events described in paragraphs (a) to (c).

Paragraph (*a*) refers to the application for continuance under the *Canada Business Corporations Act* that the Canadian Wheat Board (a corporation referred to in subsection 4(1) of the *Canadian Wheat Board (Interim Operations Act)* before that act's repeal) that was approved by the Minister of Agriculture and Agri-Food under Part III of the *Marketing Freedom for Grain Farmers Act*.

Paragraph (*b*) refers to the issuance of a promissory note or other evidence of indebtedness by the Canadian Wheat Board to a trust that is an eligible trust (see the definition "eligible trust").

Paragraph (*c*) refers to a disposition by the eligible trust of a debt that is an eligible debt (see the definition "eligible debt") in exchange for consideration that includes the issuance of shares of the Canadian Wheat Board that have a total fair market value at the time of issuance that is equal to the amount by which the principal amount of the debt exceeds $10 million.

**"eligible debt"**

In general terms, the definition "eligible debt" means the promissory note or other evidence of indebtedness referred to in paragraph (*b*) of the definition "Canadian Wheat Board continuance".

**"eligible share"**

In general terms, the definition "eligible share" means a common share of the capital stock of the Canadian Wheat Board that is issued in exchange for a debt that is an eligible debt (see definition "eligible debt"), as referred to in paragraph (*c*) of the definition "Canadian Wheat Board continuance".

**"eligible trust"**

In general terms, only one trust can be an eligible trust (see paragraph (*i*) of the definition) at any time. The trust must meet the conditions indicated below at any time to remain an eligible trust.

Paragraph (*a*) requires that the trust be established in connection with the application for continuance (see the definition "application for continuance").

Paragraph (*b*) requires that the trust be resident in Canada.

Paragraph (*c*) requires that the trust held only property of nominal value immediately before it acquired the eligible debt (see the definition "eligible debt").

Paragraph (*d*) requires that the trust is not exempt from tax under subsection 149(1).

Paragraph (*e*) requires that all of the interests of beneficiaries under the trust at that time are described by reference to units that are eligible units in the trust (see the definition "eligible unit").

Paragraph (*f*) requires that the only persons who have acquired an interest as a beneficiary under the trust from it are persons who were participating farmers at the time they acquired the interest (see the definition "participating farmer").

Paragraph (g) requires that all or substantially all of the fair market value of the property of the trust is based on eligible debt (see the definition "eligible debt"), shares of the capital stock of the Canadian Wheat Board, property described in paragraph (a) or (b) of the definition "qualified investment" in section 204 or a deposit with a credit union.

Paragraph (*h*) requires that the property that the trust has paid or distributed at or before that time to a beneficiary under the trust in satisfaction of the beneficiary's eligible unit in the trust (see definition "eligible unit") is money denominated in Canadian dollars or shares distributed as an eligible wind-up distribution of the trust (see the definition "eligible wind-up distribution).

**"eligible unit"**

The definition “eligible unit” means a unit of a trust that describes all or part of an interest as a beneficiary under the trust if the conditions in paragraph (*a*) and (*b*) are met.

Paragraph (*a*) requires that the total of all amounts each of which is the value of a unit at the time it was issued by the trust to a participating farmer (see definition “participating farmer”) does not exceed the amount by which the principal amount of the eligible debt (see the definition “eligible debt”) exceeds $10 million.

Paragraph (*b*) requires that all of the interests as a beneficiary under the trust are fixed interests (as defined in subsection 251.2(1)) in the trust.

**“eligible wind-up distribution”**

The definition “eligible wind-up distribution” of a trust means a distribution of property by a trust to a person if the conditions in paragraphs (*a*) to (*d*) are met. This definition is relevant for subsection 135.2(10) in the context of the winding up of the eligible trust.

Paragraph (*a*) requires that the distribution include a share of the capital stock of the Canadian Wheat Board that is listed on a designated stock exchange.

Paragraph (*b*) requires that the only property (other than a share described in paragraph (*a*)) distributed by the trust on the distribution is money denominated in Canadian dollars.

Paragraph (*c*) requires that the distribution result in the disposition of all of the person’s interest as a beneficiary under the trust.

Paragraph (*d*) requires that the trust ceases to exist immediately after the distribution or immediately after the last of a series of eligible wind-up distribution of the trust that includes the distribution.

**“participating farmer”**

The definition “participating farmer” in respect of a trust, at any time, means a person who meets the conditions in paragraphs (*a*) and (*b*).

Paragraph (*a*) requires that the person be eligible to receive units of the trust pursuant to the plan under which the trust directs its trustees to grant units to persons who have delivered grain under a contract with the Canadian Wheat Board on or after August 1, 2013.

Paragraph (*b*) requires that the person be engaged in the production of grain, or be entitled as landlord, vendor or mortgagee or hypothecary creditor, to grain produced by a person engaged in the production of grain or to any share of grain.

**“person”**

The definition “person” includes a partnership.

## Trust acquires an eligible debt

ITA
135.2(2)

New subsection 135(2) applies if an eligible trust acquires an eligible debt during a taxation year of the trust. In such a case, the principal amount of the eligible debt is deemed not to be included in computing the income of the eligible trust for the year in which the trust acquired the debt.

**Disposition of eligible debt**

ITA
135.2(3)

New subsection 135.2(3) of the Act applies if an eligible trust disposes of eligible debt at any time in its taxation year in exchange for consideration that includes the issuance of eligible shares. In such a case, paragraphs (*a*) to (*e*) provide specific rules regarding the computation of income of the trust and determining certain tax attributes of the eligible shares.

Paragraph (*a*) applies for the purpose of computing the income of the eligible trust for the year in respect of the disposition of the eligible debt. The eligible trust must include in its income an amount equal to the fair market value of all property (other than eligible shares) received on the exchange by the trust.

Paragraph (*b*) provides that the cost to the eligible trust of each eligible share is deemed to be nil.

Paragraph (*c*) applies for the purpose of determining the paid-up capital of the class of shares of the capital stock of the Canadian Wheat Board that includes the eligible shares. In computing the paid-up capital of that class of shares at any time after the eligible shares are issued, an amount equal to the amount of the paid-up capital in respect of that class at the time the shares are issued must be deducted. This effectively reduces their paid-up capital to nil.

Paragraph (*d*) provides that subsection 75(2), which generally provides for the attribution of income of a trust to a person resident in Canada where property that was received by the trust from a person can revert back to that person, does not apply to property that meets the conditions indicated in subparagraph (i) and (ii). Subparagraph (i) provides that the property must be held by the trust in a taxation year that ends at or after the time that the eligible trust has disposed of eligible debt in exchange for consideration that includes the issuance of eligible shares. Subparagraph (ii) requires that the property is received by the trust on the exchange or is a substitute for property referred to in subparagraph (i).

Paragraph (*e*) provides that subsections 84(2) and (3) and section 85 do not apply at any time to eligible shares. This is to ensure that section 135.2 provides a complete set of rules in respect of the eligible shares.

**Eligible trust**

ITA
135.2(4)

Subsection 135.2(4) of the Act contains rules that relate to an eligible trust and its beneficiaries.

Paragraph 135.2(4)(*a*) denies an eligible trust any deduction, for which it may otherwise be eligible, under subsection 104(6) in computing its income for a taxation year unless the trust has paid in the taxation year the relevant income amount to its beneficiaries and the trust is an eligible trust at the start of the following taxation year. Specifically, no deduction is permitted under subsection 104(6) for the trust's taxation year that is deemed, by operation of subsections 135.2(11) and 149(10), to end immediately before it ceases to be an eligible trust.

Paragraph 135.2(4)(*b*) imposes Part XII.2 tax on the eligible trust for a taxation year if it deducts an amount under subsection 104(6) for the taxation year and any of its beneficiaries at any time in the taxation year is non-resident, a non-Canadian partnership or a person exempt because of subsection 149(1) from tax.

Paragraph 135.2(4)(*c*) assigns a cost amount at all times of nil to the trust of property that is eligible debt or an eligible share.

Paragraph 135.2(4)(*d*) provides that, subject to one exception, dispositions by the trust of its property occur for proceeds equal to the fair market value of the property. The only exception is to permit a tax-deferred disposition in the circumstances described in subsection 135.2(14), which relates to the reorganization of capital of the Canadian Wheat Board. In addition, any gain or loss arising from a disposition of property by the trust is on income account.

Paragraph 135.2(4)(*e*) provides that certain income tax rules – that would have applied in respect of the trust or its beneficiaries if it were to qualify as a personal trust, unit trust or prescribed trust– do not apply. In addition, for the purposes of determining the tax consequences to a beneficiary of the trust of a change in residence of the beneficiary, the beneficiary's interest in the trust is not an excluded right or interest for the purposes of section 128.1, which sets out the income tax effects of a taxpayer becoming, or ceasing to be, resident in Canada.

Paragraphs 135.2(4)(*f*) and (*g*) recognize that it is not intended that a beneficial interest (i.e., an eligible unit) in, debt issued by, or any other security of the eligible trust become property of certain tax exempt arrangements. Consistent with this, penalties will apply to the extent that such a property is held by a DPSP, RDSP, RESP, RRIF, RRSP or TFSA. An additional tax is imposed under section 207.05 on the holder of a TFSA that acquires such a property.

Paragraph 135.2(4)(*h*) provides that paragraph (*h*) of the definition "disposition" in subsection 248(1) does not apply in respect of beneficial interests (i.e., eligible units) in the trust, with the result that payments by the trust in respect of eligible units and described in that paragraph of the definition will result in a disposition of the units.

**Participating farmer acquires an eligible unit**

ITA
135.2(5)

New subsection 135.2(5) of the Act applies if a participating farmer acquires an eligible unit in an eligible trust from the trust. In such a case, paragraph (*a*) provides that no amount in respect of the acquisition is included in computing the income of the participating farmer. In addition, paragraph (*b*) provides that the cost amount to the participating farmer of the eligible unit is deemed to be nil.

**Eligible unit issued to estate**

ITA
135.2(6)

New subsection 135.2(6) of the Act applies if a participating farmer has, immediately before the participating farmer's death, not received an eligible unit of an eligible trust for which the participating farmer was eligible pursuant to the plan under which the eligible trust directs its trustees to grant units to person who have delivered grain under a contract with the Canadian Wheat Board on or after August 1, 2013, and the eligible trust instead issues the unit to the participating farmer's estate that arose on or as a consequence of the death of the farmer. This subsection effectively deems the participatory farmer to have acquired the eligible units before their death so that the general rules in subsection (8) apply as normal.

Under paragraph (*a*), the participating farmer is deemed to have acquired the unit at the time that is immediately before the time that is immediately before the farmer's death, as a participating farmer from the eligible trust, and to own the unit at the time that is immediately before the Farmer's death.

Under paragraph (*b*), the estate is deemed not to have acquired the unit from the trust for the purpose of paragraph (*f*) of the definition "eligible trust" in subsection 135.2(1), with the result that the issuance of the unit to the estate does not cause the trust to cease to be an eligible trust.

Under paragraph (*c*), the estate is deemed to have acquired the eligible unit on and as a consequence of the participating farmer's death for the purposes of paragraphs 135.2(8)(*b*) and (*c*).

**Eligible unit – gain (loss)**

ITA
135.2(7)

New subsection 135.2(7) of the Act applies if a person disposes of an eligible unit in a trust that is an eligible trust at the time of disposition. In such a case, the gain, if any, is included in the income of the person and is deemed not be a capital gain. The loss, if any, of the person is on income account and is deemed not to be a capital loss.

**Death of a participating farmer**

ITA
135.2(8)

Subsection 135.2(8) of the Act sets out the income tax rules that apply if, immediately before an individual's death, the individual owns an eligible unit that the individual acquired as a participating farmer from an eligible trust.

Paragraph 135.2(8)(*a*) deems the individual to dispose of the unit immediately before their death.

Paragraph 135.2(8)(*b*) provides – subject to an exception in paragraphs 135.2(8)(*c*) and (*d*) which provides for a tax-deferral (i.e., rollover) in respect of the disposition – that the deemed disposition occurs for proceeds equal to the unit's fair market value and that the person who acquires the unit as consequence of the individual's death is deemed to acquire it immediately after the disposition at a cost equal to those proceeds. Any gain resulting from the disposition is included in the individual's income for the individual's final taxation year. The individual's legal representative is eligible to elect under subsection 159(5) to pay any resulting income tax under Part I, in respect of the income from the deemed disposition, in up to ten annual instalments.

Paragraphs 135.2(8)(*c*) and (*d*) provide for a tax-deferred transfer (i.e., rollover) of an eligible unit on the death of the individual to the individual's spouse or common-law partner. Under paragraph (*c*), the rollover is available only if the estate trustee of the individual's graduated rate estate files an election requesting the rollover and distributes the unit to the individual's spouse or common-law partner while the estate remains a graduated rate estate. In addition, for the rollover to apply, there cannot have been an intervening disposition of the unit by the estate, and the spouse or common-law partner must be resident in Canada at both the time of the individual's death and the time the unit is distributed from the estate.

Where the requirements of paragraph (*c*) are met, paragraph (*d*) assigns to the deceased individual's surviving spouse or common-law partner a cost amount in the eligible unit of nil, as though the surviving spouse or common-law partner had acquired the unit directly from the trust (see subsection 135.2(5)). Any gain on the unit accrued up to the time of the individual's death is deferred to be taxed in the hands of the surviving spouse or common-law partner on a subsequent disposition. In addition, any income on the eligible unit that arose while the estate held the eligible unit is required to be reported as income of the spouse or common-law partner and not the estate. Consistent with these objectives, where the rollover applies, the estate is treated as having acquired the eligible unit from the individual at a cost amount equal to nil and having distributed the eligible unit to the spouse or common-law partner for proceeds equal to that cost amount.

**Participating farmer disposes of eligible unit**

ITA
135.2(9)

New subsection 135.2(9) of the Act applies if, at any time, a participating famer disposes of an eligible unit of an eligible trust that the participating farmer acquired from the eligible trust, other than a disposition described in paragraphs 135.2(8)(*a*) (i.e., the deemed disposition on a farmer's death), 135.2(10)(*d*) (i.e., the deemed disposition on an eligible wind-up distribution) or 135.2(11)(*b*) (i.e., the deemed disposition on the eligible trust ceasing to be an eligible trust).

Paragraphs 135.2(9)(*a*) to (*c*) provide rules regarding the computation of the income of the participating farmer.

Paragraph (*a*) provides that the proceeds of the participating farmer from the disposition are deemed to be equal to their fair market value of the unit immediately before the disposition.

Paragraph (*b*) applies if the disposition results from a distribution of money denominated in Canadian dollars by the trust to the participating farmer in a taxation year of the trust, if the money is proceeds from the disposition in that taxation year by the trust of other property, and if the participating farmer is not a person described in any of clauses 135.2(4)(*b*)(ii)(A) to (C). In such case, the trust's gain from the disposition is reduced to avoid double tax.

Paragraph (*c*) applies if the participating farmer is a Canadian-controlled private corporation. For the purpose of section 125, the gain of such a participating farmer from the disposition is deemed to be income from an active business carried on by the corporation.

**Eligible wind-up distribution**

ITA
135.2(10)

Subsection 135.2(10) of the Act provides for the tax treatment of a distribution of property from the eligible trust to its beneficiaries in which can apply where trust property is distributed by a trust to a beneficiary in satisfaction of the beneficiary capital interest an eligible wind-up distribution (as defined in subsection 135.2(1)). Subsection 107(2.1) does not apply to the distribution. An eligible wind-up distribution is, in general terms, a distribution by the trust of shares of the Canadian Wheat Board (of a class that is listed for trading on a designated stock exchange), alone or with money denominated in Canadian dollars, in exchange for the redemption of eligible units of the trust. The distribution must be part of a series of identical distributions and immediately following the series, the trust must cease to exist.

Subsection 135.2(10) provides that an eligible wind-up distribution by the trust results in a disposition by it of the distributed property for proceeds equal to the fair market value of the property. The person (i.e., the trust beneficiary) to whom the property is distributed is treated as having acquired the property at a cost equal to those proceeds. The trust's gain (i.e., income) resulting from the disposition is required to be included in computing the income of the person to whom the property is distributed. This amount cannot be added to the cost to the person of the property acquired on the distribution.

The eligible units redeemed by the trust in exchange for the distribution are treated as having been disposed of by the beneficiary for proceeds equal to the cost amount of the unit.

**Ceasing to be an eligible trust**

ITA
135.2(11)

New subsection 135.2(11) of the Act applies if a trust ceases to be an eligible trust at a particular time.

Paragraph (a) provides that subsection 149(10) applies to the trust as if it ceased at that particular time to be exempt from tax under Part I on its taxable income and the list of provisions in paragraph 149(10)(*c*) included a reference to section 135.2. In effect, the trust is subject to a deemed taxation year end immediately before the particular time and a fair market value disposition and reacquisition of all of its property in connection with the end of that taxation year. In addition, all of the trust's tax attributes (i.e., undeducted balances) from before the particular time cease to be available for use in future taxation years, and future tax attributes may not be carried back to a taxation year that ends before the particular time.

Where subsection 135.2(11) applies, subsection 135.2(4) applies to deny the trust a deduction under subsection 104(6) in computing its income for the deemed year-end, with the result that any gains realized on the deemed disposition are taxed in the trust as income for that taxation year.

Paragraph 135.2(11)(*b*) applies to each person who holds at the particular time an eligible unit of the trust. Under subparagraph (i), the person is deemed to have disposed of each of their eligible units (at the time that is immediately before the time that is immediately before the particular time) for proceeds equal to the cost amount of the unit to the person. Under subparagraph (ii), the person is deemed to have reacquired the eligible unit (at the time that is immediately before the particular time) at a cost equal to the fair market value of the unit (at the time that is immediately before the particular time).

**Stock dividends on CWB shares**

ITA
135.2(12)

New subsection 135.2(12) of the Act applies if the eligible trust receives a share of a class of the capital stock of the Canadian Wheat Board issued in payment of a stock dividend on eligible shares of its capital stock that the eligible trust holds (or on another share of the Canadian Wheat Board previously acquired as a stock dividend). In such case, subsection 135.2(12) determines, for the purposes of the Act, the amount of the increase in the paid-up capital for all classes of shares of the Canadian Wheat Board in respect of the issuance of all shares paid by the Canadian Wheat Board to the eligible trust as the stock dividend or any other stock dividend paid to other shareholders in connection with that stock dividend. The amount of the increase in the paid-up capital for all classes of shares of the Canadian Wheat Board in such circumstances is deemed to be no more than $1.

**Reorganization of capital – Canadian Wheat Board**

ITA
135.2(13)

New subsection 135.2(13) of the Act provides conditions for which new subsection 135.2(14) applies in respect of a share-for-share exchange made by the eligible trust, which provide rollover treatment for the exchange.

Subsection 135.2(13) provides that the rollover treatment will apply if an eligible trust disposes of all of the shares of a class of the capital stock of the Canadian Wheat Board that the trust owns (the "old shares") and if the conditions in paragraphs (*a*) to (*d*) are met.

Paragraph (*a*) requires that the disposition of the old shares results from the acquisition, cancellation or redemption in the course of a reorganization of the capital of the Canadian Wheat Board.

Paragraph (*b*) requires that the Canadian Wheat Board issues to the eligible trust on the exchange shares of a class of its capital stock (the "new shares") the terms and conditions of which (including the entitlement to receive an amount on a redemption, acquisition or cancellation) are in all material respects the same as those of the old shares.

Paragraph (*c*) requires that the amount that is the fair market value of all of the new shares acquired by the eligible trust on the exchange equals the total fair market value of all of the old shares disposed of by the eligible trust.

Paragraph (*d*) requires that the amount that is the total paid-up capital in respect of all the new shares is equal to the amount that is the total paid-up capital in respect of all the old shares.

**Rollover of shares on reorganization**

ITA
135.2(14)

New subsection 135.2(14) of the Act provides rollover treatment for a share-for-share exchange made by the eligible trust if all the conditions in new subsection 135.2(13) are met. In general terms, new subsection 135.2(13) relates to an exchange by the eligible trust of shares of a class of the capital stock of the Canadian Wheat Board (the “old shares”) for new shares of a class of its capital stock (the “new shares”).

Paragraphs 135.2(14)(*a*) to (*c*) contain rules that effect the rollover treatment for the share-for-share exchange.

Paragraph (*a*) provides that the old shares are deemed to be disposed of by the eligible trust for proceeds equal to its cost amount to the eligible trust.

Paragraph (*b*) provides that the new shares acquired for the old shares are deemed to be acquired for cost equal to the proceeds of disposition of the old shares (which is equal to the cost amount of the old shares).

Paragraph (*c*) provides that the new shares are deemed to be eligible shares if the old shares were eligible shares.

Paragraph (*d*) applies if the new shares are deemed to be eligible shares because of paragraph (*c*), and those shares are included in a class of shares that also includes other shares that are not eligible shares. In such a case, the new shares that are eligible shares are deemed to have been issued in a separate series of the class, and the other shares are also deemed to have been issued as a separate series of the class.

**Information filing requirement**

ITA
135.2(15)

New subsection 135.2(15) of the Act requires that a trust must file with the Minister of National Revenue a prescribed form in prescribed manner in respect of each of its taxation years in which it is an eligible trust on or before the trust’s filing due date for the year. If a trust fails to file the prescribed form as required, the trust is subject to new subsection 135.2(16), which imposes a late-filing penalty and provide for the loss of eligible trust status.

**Failure to file prescribed form**

ITA
135.2(16)

New subsection 135.2(16) of the Act applies if a trust fails to file the form required by new subsection 135.2(15) on or before the day that is the trust's filing-due date for a taxation year.

Paragraph (*a*) provides that the trust is liable to a penalty equal to the product obtained when $1,000 is multiplied by the number of days during which the failure continues, in addition to any other penalty for which the trust may be liable under the Act in respect of the failure.

Paragraph (*b*) provides that the trust is deemed to cease to be an eligible trust if the trust has not filed with the Minister of National Revenue the prescribed form within 30 days after the trust is served personally or by registered mail with a demand in writing from the Minister of National Revenue for the form to be filed. In such case, the trust is deemed to cease to be an eligible trust at the end of the day on which the demand was served.

**Clause 39**

**Definitions**

ITA
146.02(1)

Subsection 146.02(1) of the Act defines various expressions for the purposes of the Lifelong Learning Plan.

The definition "repayment period" defines a period of no more than 10 years for which designated repayment must be made under subsection 146.02(3) to avoid an income inclusion under subsection 146.02(4).

Consequential to the repeal of the education tax credit, the definition "repayment period" is amended to refer to subsection 118.6(2) only for calendar years before 2017, and for calendar years after 2016, to use the definition qualifying student in 118.6(1) to determine the beginning of the participation period.

**Clause 40**

**Deemed ownership of partnership property**

ITA
149.1(11)

Private foundations are subject to certain restrictions on their corporate shareholdings pursuant to sections 149.1, 149.2 and 188.1 of the Act. In general, a private foundation is required to divest itself of excessive shareholdings in corporations and to disclose material corporate shareholdings in its annual prescribed information form. Section 149.1 provides the rules that must be met for charities to obtain and keep registered status. Section 149.2 provides rules relating to the calculation of the divestment obligation percentages of a private foundation in respect of its excess holdings of the shares of the capital stock of a corporation. Section 188.1 provides for the application of penalties to charities and the suspension of the privilege of issuing charitable donation tax receipts.

New subsection 149.1(11) of the Act is introduced consequential to the introduction of new subsection 253.1(2), which provides that where a registered charity or registered Canadian amateur athletic association holds an interest as a limited partner in a limited partnership, it will not be considered, solely because of its acquisition or holding of the limited partnership interest, to carry on any business or other activity of the partnership.

New subsection 149.1(11) provides that, for the purposes of sections 149.1, 149.2 and 188.1, each member of a partnership is deemed to own the portion of each property of the partnership equal to the proportion that the fair market value of the member's interest in the partnership is of the fair market value of all interests in the partnership. The effect of new subsection 149.1(11) is that the calculation of a private foundation's excess corporate holdings for the purposes of sections 149.1, 149.2 and 188.1 is determined by effectively looking through partnerships of which it is, directly or indirectly, member.

This amendment is deemed to have come into force on April 21, 2015.

**Clause 41**

**Assessment**

ITA
152(1)(*b*)

Subsection 152(1) of the Act lists certain refunds and deemed payments of tax that are to be determined in the course of assessing a taxpayer's tax. Paragraph 152(1)(*b*) refers to the specific provisions under which amounts are deemed to be paid on account of tax.

This paragraph is amended, for the 2016 and subsequent taxation years, to add a reference to new subsection 122.9(2). New subsection 122.9(2) deems an amount equal to an individual's school supplies tax credit for a taxation year to have been paid on account of the individual's tax payable for that year.

This paragraph is amended to remove the reference to subsections 122.8(2) and (3) consequential to the repeal of the child fitness tax credit for the 2017 and subsequent taxation years.

**Reassessment with taxpayer's consent**

ITA
152(4.2)(*b*)

Subsection 152(4.2) of the Act contains rules relating to the reassessment of tax, interest and penalties payable by a taxpayer and to the redetermination of tax deemed to have been paid by a taxpayer. This subsection gives the Minister of National Revenue discretion to make a reassessment or a redetermination beyond the normal reassessment period when so requested by an individual (other than a trust) or a graduated rate estate.

Paragraph (*b*) of this subsection is amended for the 2016 and subsequent taxation years to add a reference to new subsection 122.9(2), which deems an amount equal to an individual's School Supplies Tax Credit for a taxation year to have been paid on account of the individual's tax payable for that year.

Paragraph (*b*) of this subsection is amended for the 2017 and subsequent taxation years, consequential to the repeal of the child fitness tax credit, to remove the reference to subsections 122.8(2) and (3).

**Clause 42**

**Withholding**

ITA
153(1)(*a*)

Section 153 of the Act requires the withholding of tax from certain payments described in paragraphs 153(1)(*a*) to (*t*). The person making such a payment is required to remit the amount withheld to the Receiver General on behalf of the payee. Paragraph (*a*) requires withholdings with respect to salary, wages and other remuneration paid to an employee, including a non-resident employee working in Canada for a non-resident employer, other than amounts described in subsection 115(2.3) (relating to the 2010 Vancouver Olympics) or 212(5.1) (relating to certain acting services).

Paragraph (*a*) is amended to exclude from the withholding obligations, in addition to amounts described in 212(5.1), amounts paid at any time by a qualifying non-resident employer to a qualifying non-resident employee if, at the time of the payment, the employee is a "qualifying non-resident employee" and the employer is a "qualifying non-resident employer", both as defined in subsection 153(6). The reference to subsection 115(2.3) is no longer necessary and so, it is not included in the revised paragraph (*a*).

This amended paragraph applies in respect of payments made after 2015.

**Split pension amount**

ITA
153(1.3)

Subsection 153(1.3) of the Act gives the Minister of National Revenue the discretion to reduce the tax deducted or withheld under subsection 153(1) in cases where the Minister is satisfied that the amount of tax required to be deducted or withheld from a payment under that subsection would cause undue hardship to a taxpayer.

Consequential to the repeal of the income splitting tax credit for couples with children under 18, subsection 153(1.3) is amended to remove the reference to a deduction or an intention to claim a deduction under section 119.1 as not being a basis on which the Minister can exercise discretion under subsection 153(1) to reduce the tax deducted or withheld under subsection 153(1).

This amendment applies to the 2016 and subsequent taxation years.

**Definitions**

ITA
153(6)

Existing subsection 153(6) of the Act defines the term "designated financial institution", which is used in subsection 153(1). Subsection 153(6) is amended to add two new definitions: "qualifying non-resident employee" and "qualifying non-resident employer", which are used in the new withholding exception in subparagraph 153(1)(*a*)(ii).

**"qualifying non-resident employee"**

In order to be a qualifying non-resident employee at any time in respect of a payment of salary, wages or other remuneration (*i.e.*, a payment referred to in paragraph 153(1)(*a*)), three conditions must be met by the employee in new paragraphs 153(1)(*a*), (*b*) and (*c*) of the definition "qualifying non-resident employee". The condition in paragraph (*a*) of the definition is that the employee is resident in a country with which Canada has a tax treaty at the time of the payment. The condition in paragraph (*b*) of the definition is that the employee is not liable to tax under Part I of the Act in respect of such payment because of that treaty. The condition in paragraph (*c*) of the definition may be satisfied in two ways. First, if the employee works in Canada for less than 45 days in the calendar year that includes the time of payment, alternatively, if the employee is present in Canada for less than 90 days in any 12-month period that includes the time of that payment.

Days worked in Canada include only days during which the employee is physically present in Canada and paid by his or her employer for the time spent in, Canada which generally excludes weekends, days off and holidays.

The maximum number of days specified in paragraph (*c*) of the definition "qualifying non-resident employee" may be higher than what is authorized by the tax treaty referred to in paragraph (*b*) of the definition. Since all three conditions (new paragraphs (*a*), (*b*) and (*c*)) in the definition "qualifying non-resident employee" must be satisfied to be a qualifying non-resident employee, an employee who is not treaty-exempt (for example, due to an employee's extended presence in Canada, totalling over 183 days during a 12-month period that overlaps two consecutive calendar years) cannot qualify.

The computation of the number of days present in Canada is based in part upon the OECD commentary "days of physical presence" method and includes any day during which the employee is present in Canada, even if the employee is only present for a portion of the day.

**"qualifying non-resident employer"**

A qualifying non-resident employer, at any time in respect of a payment of salary, wages or other remuneration, means an employer who is certified by the Minister under subsection 153(7) at the time of the payment, and meets an additional condition relating to treaty residence.

If the employer is not a partnership, then at the time of the payment, it must be the case that the employer either is resident for treaty purposes in a country with which Canada has a tax treaty or, in the case of a corporation that is not resident for treaty purposes in a country with which Canada has a tax treaty (e.g., this may be the case for a Limited Liability Corporation formed in the United States), would be treaty-resident in such a country if the corporation were treated, for the purpose of income taxation in that country, as a body corporate.

If the employer is a partnership, then at least 90% of the partnership's income or loss for the fiscal period that includes the time of the payment must be allocated to members that either are resident for treaty purposes in a country with which Canada has a tax treaty or, in the case of a member that is a corporation that is not resident for treaty purposes in a country with which Canada has a tax treaty, would be treaty-resident in such a country if it was treated, for the purpose of income taxation in that country, as a body corporate. If the income of the partnership is nil for the fiscal period, the income for that period is deemed to be $1,000,000 for the purpose of determining a member's share of the partnership income.

This amendment applies in respect of payments made after 2015.

**Certification by Minister**

ITA
153(7)

New subsection 153(7) of the Act gives the Minister the authority to certify an employer, or revoke an employer's certification, for the purpose of the definition "qualifying non-resident employer" in subsection (6), which is relevant for the exclusion from the withholding requirements in subparagraph 153(1)(*a*)(ii).

The Minister may certify an employer for a specific period of time if the employer has applied to be certified in prescribed form containing prescribed information and the Minister is satisfied that the employer meets the conditions in paragraph (*a*) of the definition "qualifying non-resident employer" in subsection (6) and any other conditions established by the Minister.

The Minister may revoke an employer's certification if the Minister is no longer satisfied that the employer meets the conditions for certification.

This amendment applies in respect of payments made after 2015.

**Clause 43**

**Repeated failures penalty**

ITA
163(1)

Subsection 163(1) of the Act provides for a penalty for repeated failures by a person to report any amount required to be included in computing that person's income for a taxation year.

Subsection 163(1) is amended to specify that a person is liable to the penalty under this subsection only if the person fails to report at least $500 of income in a taxation year, fails to report at least $500 in any of the three preceding taxation years and is not liable to a penalty under subsection 163(2). The amount of the penalty is determined under new subsection 163(1.1).

This amendment applies to taxation years that begin after 2014.

**Amount of penalty**

ITA
163(1.1)

New subsection 163(1.1) of the Act provides for the calculation of the amount of the penalty under subsection 163(1). The amount of the penalty is the lesser of:

- 10 per cent of the amount of unreported income; and
- an amount equal to 50 per cent of the difference between the understatement of tax (or the overstatement of tax credits) related to the unreported amount and the amount of any tax paid in respect of the unreported amount (e.g., by an employer as employee withholdings).

This amendment applies to taxation years that begin after 2014.

**False statements or omissions**

ITA
163(2)(*c.4*)

Subsection 163(2) of the Act imposes a penalty where a taxpayer knowingly, or in circumstances amounting to gross negligence, participates in or makes a false statement for the purposes of the Act. The penalty is determined with reference to the understatement of tax or the overstatement of amounts deemed to be paid on account of tax. Paragraph 163(2)(*c.4*) provides that the penalty may apply in the case of an overstatement of an amount deemed to be paid under subsection 122.8(2) or (3) of the Act.

Paragraph 163(2)(*c.4*) is repealed consequential to the repeal of the child fitness tax credit for the 2017 and subsequent taxation years.

**False statements or omissions**

ITA
163(2)(*c.5*)

Subsection 163(2) of the Act imposes a penalty where a taxpayer knowingly, or in circumstances amounting to gross negligence, participates in or makes a false statement or omission. This subsection is amended to add new paragraph 163(2)(*c.5*) consequential to the introduction of the school supplies tax credit in new section 122.9. Paragraph (*c.5*) is intended to ensure that the penalty is imposed in the case of an overstatement of an amount deemed to be paid under subsection 122.9(2).

This amendment applies to the 2016 and subsequent taxation years.

**Clause 44**

**“labour-sponsored funds tax credit”**

ITA
211.7(1)

Subsection 211.7(1) of the Act provides definitions for the purposes of Part XII.5 of the Act. Part XII.5 levies a tax on the disposition of a share, which is essentially a recovery of the labour-sponsored funds tax credit in respect of the original acquisition of the share which is calculated based on the definition “labour sponsored funds tax credit” in subsection 211.7(1).

Consistent with the phase out of the labour-sponsored funds tax credit, and to ensure that this penalty does not apply where no tax credit was available for the original acquisition of the share paragraphs (*b*) and (*c*) of the definition “labour sponsored funds tax credit” in subsection 211.7(1) provide that for original acquisitions of shares after 1995 and prior to March 2, 2017, to calculate the tax credit as the federal tax credit potentially available in respect of the acquisition of the share based on the claim by the individual under subsection 127.4(2) in respect of the original acquisition of the share. Paragraph (*c*) provides that acquisitions on or after March 2, 2017 will result in a labour-sponsored funds tax credit of nil for the purposes of Part XII.5.

Based on the restoration of the labour-sponsored funds tax credit for provincially prescribed LSVCCs, paragraphs (*b*) and (*c*) of the definition “labour-sponsored funds tax credit” in subsection 211.7(1) are replaced by new paragraph (*b*). This amendment provides that for LSVCC shares acquired after 1996, the labour-sponsored funds tax credit is based on the credit that was potentially available in subsection 127.4(6) in respect of the share. This amendment ensures that the penalty in subsection 211.8(1) will apply to a provincially prescribed LSVCC that was eligible for the tax credit in subsection 127.4(6) for the 2017 and subsequent taxation years.

This amendment applies to the 2016 and subsequent taxation years.

**Clause 45**

**Tax credits allowed**

ITA
217(5)

Subsection 217 (5) of the Act sets out certain rules under which tax credits, other than the special subsection 217(6) credit, will be available to a non-resident person who chooses to have section 217 apply for a taxation year.

Subparagraph 217(5)(*a*)(i) is amended to remove the reference to section 118.6, consequential to the repeal of the education and textbook tax credits. This amendment applies to the 2017 and subsequent taxation years.

**Clause 46**

**No penalty – qualifying non-resident employers**

ITA
227(8.6)

New subsection 227(8.6) of the Act provides an exception to qualifying non-resident employers (defined in subsection 153(6)) from the penalty to withhold tax in subsection 227(8) in respect of a payment made to an employee if, after reasonable inquiry, the employer had no reason to believe at the time of the payment that the employee was not a qualifying non-resident employee (defined in subsection 153(6)).

This amendment applies in respect of payments made after 2015.

**Clause 47**

**Where taxpayer information may be disclosed**

ITA
241

Section 241 of the Act prohibits officials and other representatives of a government entity from communicating taxpayer information obtained under the Act unless they are specifically authorized by one of the exceptions found in this section.

ITA
241(4)

Subsection 241(4) of the Act authorizes the communication of taxpayer information obtained under the Act to specified persons for specific purposes. New subparagraph 241(4)(*d*)(xviii) is added so that taxpayer information may be provided to an official of the Canada Revenue Agency solely for the purpose of enabling the official to collect amounts owing to Her Majesty in right of Canada or Her Majesty in right of a province under the *Government Employees Compensation Act*, the *Canada Labour Code*, the *Merchant Seamen Compensation Act*, the *Canada Student Loans Act*, the *Canada Student Financial Assistance Act*, the *Postal Services Continuation Act, 1997*, the *Wage Earner Protection Program Act*, the *Apprentice Loans Act*, or a law of a province governing the granting of financial assistance to students at the post-secondary school level.

New paragraph 214(4)(*t*) is added so that taxpayers information may be provided to an official for the sole purpose, of enabling the Chief Actuary to conduct actuarial reviews of certain pension plans.

These amendments come into force on Royal Assent.

**Clause 48**

**Definitions**

Subsection 248(1) of the Act contains definitions that apply for the purposes of the Act.

ITA
248(1)

**"dividend rental arrangement"**

The definition "dividend rental arrangement" is amended to add new paragraphs (*c*) and (*d*). Its language is also updated in certain respects.

New paragraph (*c*) of the definition provides that a dividend rental arrangement of a person includes any synthetic equity arrangement in respect of a DRA share of the person. The term "synthetic equity arrangement" is defined in subsection 248(1) of the Act. A synthetic equity arrangement that is a dividend rental arrangement under new paragraph (*c*) of the definition may, depending on the circumstances, also constitute a dividend rental arrangement under existing paragraph (*a*) of the definition.

New paragraph (*d*) of the definition is an anti-avoidance rule intended, for example, to prevent parties that otherwise deal at arm's length with each other from colluding with one-another to circumvent the definition "synthetic equity arrangement". Paragraph (*d*) reflects the broader assumption underlying the synthetic equity arrangement rules that market participants that otherwise deal at arm's length with each other will not collude with one-another to enter into transactions that do not fall within the rules but have the effect of providing the same benefits to each participant.

Paragraph (*d*) provides that a dividend rental arrangement will include one or more agreements or arrangements (other than agreements or arrangements described in new paragraph (*c*) of the definition) that are entered into by the person or the connected person referred to in paragraph (*a*) of the new definition “synthetic equity arrangement” including, for greater certainty, by any combination of the person and connected persons if:

- the agreements or arrangements have the effect, or would have the effect if each agreement entered into by a connected person were entered into by the person, of eliminating all or substantially all of the person’s risk of loss and opportunity for gain or profit in respect of a DRA share of the person;
- as part of a series of transactions that includes these agreements or arrangements, a tax-indifferent investor (as defined in subsection 248(1)), or a group of tax-indifferent investors each member of which is affiliated with every other member, obtains all or substantially all of the risk of loss and opportunity for gain or profit in respect of the DRA share or an identical share (as defined in new subsection 112(10) of the Act); and
- it is reasonable to conclude that one of the purposes of the series of transactions is to obtain the result described above.

For further information, see the commentary on the new definitions “synthetic equity arrangement”, “DRA share” and “tax-indifferent investor” in subsection 248(1).

This amendment applies to

- dividends that are paid or become payable after April 2017; and
- dividends that are paid or become payable at any time after October 2015 and before May 2017 on a share if, in general terms, all or any part of an agreement or arrangement, in respect of the share, is entered into, acquired, extended or renewed, or if the notional amount under an agreement is increased, after April 21, 2015 and before that time.

**“DRA share”**

The definition “DRA share” is added to subsection 248(1) of the Act. A “DRA share” of a person or partnership is intended to include any share on which dividends could be received (or deemed to be received) by the person or partnership and in respect of which there could be a synthetic equity arrangement.

In most cases, a person or partnership will receive a dividend on a share if the person or partnership owns the share for tax purposes. This will be the case, for example, if the person or partnership owns the share under the governing private law or is deemed to own the share under a securities lending arrangement. Such a share will be a DRA share of that person or partnership under paragraph (*a*) of the definition.

It is also possible for a person or partnership to receive or be deemed to receive a dividend on a share without the person or partnership being considered to own the share for tax purposes. Paragraphs (*b*), (*c*), (*d*) and (*e*) of the definition are intended to deal with these situations. A share that is described in any of these paragraphs will be a DRA share of that person or partnership.

This amendment is deemed to have come into force on April 22, 2015.

**“recognized derivatives exchange”**

The definition “recognized derivatives exchange” is added to subsection 248(1) of the Act. A “recognized derivatives exchange” is a person or partnership recognized or registered under the securities laws of a province to carry on the business of providing the facilities necessary for the trading of options, swaps, futures contracts or other financial contracts or instruments whose market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to or based on an underlying interest.

For the purposes of the definition, an exchange will be considered to be recognized or registered under the securities laws of a province if a provincial securities commission has, for example, published a public statement or notice to this effect. Both Canadian and foreign derivatives exchanges may potentially meet the requirements of the definition.

The definition is relevant for the purposes of subparagraph (*b*)(i) of the new definition “synthetic equity arrangement” in subsection 248(1), which provides an exception for certain agreements traded on a recognized derivatives exchange from being characterized as a synthetic equity arrangement.

For further information, see the commentary on the new definition “synthetic equity arrangement” in subsection 248(1).

This amendment is deemed to have come into force on April 22, 2015.

**“specified mutual fund trust”**

The definition “specified mutual fund trust” is added to subsection 248(1) of the Act. A “specified mutual fund trust”, at any time, means a mutual fund trust other than one for which it can reasonably be considered, having regard to all the circumstances, including the terms and conditions of the units of the trust, that the total of all amounts each of which is the fair market value, at that time, of a unit issued by the trust and held by a person exempt from tax under section 149 of the Act is all or substantially all of the total of all amounts each of which is the fair market value, at that time, of a unit issued by the trust.

The definition is relevant for the purposes of paragraphs (*c*) and (*e*) of the new definition “tax-indifferent investor” in subsection 248(1), which exclude a specified mutual fund trust from being characterized as a tax-indifferent investor.

For further information, see the commentary on the new definitions “tax-indifferent investor” and “synthetic equity arrangement” in subsection 248(1).

This amendment is deemed to have come into force on April 22, 2015.

**“specified synthetic equity arrangement”**

The definition “specified synthetic equity arrangement” is added to subsection 248(1) of the Act. A “specified synthetic equity arrangement”, in respect of a DRA share of a person or partnership, means one or more agreements or other arrangements that:

- have the effect of providing to a person or partnership all or any portion of the risk of loss or opportunity for gain or profit in respect of the DRA share; and

- can reasonably be considered to have been entered into in connection with a synthetic equity arrangement, in respect of the DRA share, or in connection with another specified synthetic equity arrangement, in respect of the DRA share.

Paragraph (*a*) of the definition provides that, for greater certainty, opportunity for gain or profit includes rights to, benefits from and distributions on a share.

The definition is relevant for the purposes of new subsections 112(2.31) and (2.32) of the Act. In general terms, a "specified synthetic equity arrangement" represents the second or any subsequent leg in a back-to-back chain of agreements or arrangements.

For further information, see the commentary on new subsections 112(2.31) and (2.32) and on the definition "synthetic equity arrangement" in subsection 248(1).

This amendment is deemed to have come into force on April 22, 2015.

**"synthetic equity arrangement"**

The definition "synthetic equity arrangement" is added to subsection 248(1) of the Act. A "synthetic equity arrangement" in respect of a DRA share of a person or partnership (referred to in the definition as the "particular person") means one or more agreements or other arrangements that satisfy the criteria in paragraph (*a*) of the definition, but does not include any agreements or arrangements described in any of subparagraphs (*b*)(i), (ii) or (iii) of the definition. A synthetic equity arrangement will often take the legal form of one or more derivatives but it could also be comprised of other types of agreements or arrangements.

Subparagraph (*a*)(i) of the definition provides that a synthetic equity arrangement must be entered into by the particular person or by a person or partnership that does not deal at arm's length with, or is affiliated with, the particular person (referred to in the definition as a "connected person") including, for greater certainty, by any combination of the particular person and connected persons, with one or more persons or partnerships (referred to in the definition as a "counterparty" and in new subsection 112(2.32) of the Act as a "counterparty" or an "affiliated counterparty", as appropriate).

Subparagraph (*a*)(ii) of the definition provides that a synthetic equity arrangement must have the effect, or would have the effect if each agreement entered into by a connected person were entered into by the particular person, of providing all or substantially all of both the risk of loss and opportunity for gain or profit in respect of the DRA share of the particular person to a counterparty or a group of counterparties (each member of which is affiliated with every other member).

Two or more agreements or other arrangements entered into in connection with each other by the same two parties must be considered together to determine if the overall effect is to provide all or substantially all of the risk of loss and opportunity for gain or profit in respect of a DRA share to the counterparty. Otherwise, parties could replicate a total return exposure arrangement by entering into two or more separate agreements, each of which would not provide all or substantially all of the risk of loss and opportunity for gain or profit in respect of the DRA share, but together would do so. To that end, subparagraph (*a*)(ii) of the definition considers each agreement entered into by a connected person (within the meaning assigned by subparagraph (*a*)(i) of the definition) to have been entered into by the particular person for the purpose of determining whether all or substantially all of the risk of loss and opportunity for gain or profit in respect of a DRA share of that particular person has been provided to a counterparty.

The determination of whether all or substantially all of the risk of loss and opportunity for gain or profit in respect of a share has been provided to a counterparty is highly factual. In particular, the term “substantially all” does not always lend itself to a bright-line, numerical threshold. For instance, a relevant consideration is the factual threshold under which a counterparty that enters into an arrangement as an alternative to investing directly in shares would find it economically viable to do so.

An element of probability must generally be taken into account in determining the risk of loss and opportunity for gain or profit in respect of a share that is provided under an arrangement. For example, a particular person may enter into a cash-settled total return swap that references a particular share when the share is trading at $100 and under which the counterparty agrees to pay the particular person an amount equal to any decrease in the fair market value of the share but only where the share drops to a price between $100 and $60 at the end of the term. The total return swap may still be considered to provide substantially all of the risk of loss to the counterparty if, for example, it is virtually certain, as determined when the swap is entered into, that the share will trade within that range.

A synthetic equity arrangement may have the effect of providing all or substantially all of the risk of loss and opportunity for gain or profit in respect of a share to a counterparty where the arrangement references the share of the corporation in respect of which the particular person receives a dividend but also where it references a different share of the same corporation, a share of another corporation or any other underlying interest, provided that it is reasonably expected to provide the same or substantially the same risk of loss and opportunity for gain or profit as the relevant share.

A synthetic equity arrangement may have the effect of providing to a counterparty all or substantially all of the risk of loss and opportunity for gain or profit in respect of a number of shares of a corporation that is different than the number of shares of that corporation referenced under the arrangement. When a synthetic equity arrangement provides to a counterparty a fraction or a multiple of all or substantially all of the risk of loss and opportunity for gain or profit of a number of referenced shares, the number of shares in respect of which the arrangement is in respect of must be adjusted to take into account the fraction or multiple. For example, if a cash-settled total return swap provides 50% of the risk of loss and opportunity for gain or profit on 200 shares of ABC Co., the total return swap will be considered to be an arrangement that provides 100% of the same exposure on 100 shares of ABC Co. (and will therefore be a synthetic equity arrangement in respect of 100 shares of ABC Co.).

Subparagraph (*a*)(ii) of the definition also provides that, for greater certainty, opportunity for gain or profit includes rights to, benefits from and distributions on a share. Under a typical synthetic equity arrangement, the particular person will be under an obligation to pay or credit an amount that is contingent upon or determined by reference to dividends paid on the underlying shares, whether the reference is explicit or implicit (referred to in these notes as “dividend-equivalent amounts”). Certain synthetic equity arrangements, such as total return swaps, will provide for dividend-equivalent amounts equal to the actual dividend payments on the underlying shares. Other types of synthetic equity arrangements, such as forward contracts and same strike price put-call arrangements, may provide for dividend-equivalent amounts based on expected dividend payments on the underlying shares.

Given that subparagraph (*a*)(ii) of the definition is based on the effects of an arrangement, for the purposes of determining whether an arrangement has the effect of providing all or substantially all of the risk of loss and opportunity for gain or profit in respect of a DRA share to a counterparty:

- there is no requirement that the counterparty have some legal right with respect to the underlying share referenced under the synthetic equity arrangement; and
- an arrangement entered into where each counterparty is substituted for a central clearing counterparty, through novation or otherwise, is generally considered to have been entered into by the initial counterparties.

Subparagraph (*a*)(iii) of the definition provides that where an arrangement is entered into by a connected person, it must be reasonable to consider that the arrangement was entered into with the knowledge, or where there ought to have been the knowledge, that the effect described in subparagraph (*a*)(ii) of the definition would result. This ensures that the synthetic equity arrangement rules will not apply to a particular person when a connected person enters into a transaction that inadvertently economically offsets the economic exposure of a DRA share of the particular person.

Paragraph (*b*) of the definition excludes certain agreements and arrangements from being a synthetic equity arrangement.

Subparagraph (*b*)(i) of the definition excludes an agreement that is traded on a recognized derivatives exchange unless it can reasonably be considered that, at the time the agreement is entered into:

- the particular person or the connected person, as the case may be, knows or ought to know that the agreement is part of a series of transactions that has the effect of providing all or substantially all of the risk of loss and opportunity for gain or profit in respect of the DRA share to a tax-indifferent investor, or a group of tax-indifferent investors each member of which is affiliated with every other member; or
- one of the main reasons for entering into the agreement is to obtain the benefit of a deduction in respect of a payment, or a reduction of an amount that would otherwise have been included in income, under the agreement, that corresponds to an expected or actual dividend in respect of a DRA share.

The first anti-avoidance rule contained in subparagraph (*b*)(i) of the definition is intended to prevent, for example, a particular person from agreeing to the terms of an equity derivative with a tax-indifferent investor outside of an exchange and then executing the trade through the exchange when it is thinly-traded. In these circumstances, the anti-avoidance rule will apply whether or not the particular person knows that the tax-indifferent investor will subsequently retain all or substantially all of its risk of loss or opportunity for gain or profit in respect of the DRA share.

The second anti-avoidance rule is intended to prevent a particular person from entering into an exchange-traded derivative for one of the main reasons of obtaining, for example, the benefit of a deduction in respect of a payment under the agreement that corresponds to expected dividends in respect of a DRA share. A particular person could realize a similar tax benefit if it entered into an exchange-traded equity derivative as if it entered into an over-the-counter equity derivative, such as a total return swap, in respect of the same DRA share. If a particular person enters into an exchange-traded derivative for essentially commercial reasons, such as temporarily hedging itself against broad market risks, and if obtaining the deduction in respect of a payment that corresponds to expected dividends is merely incidental to those commercial reasons, then the particular person would generally not be considered to be subject to this anti-avoidance rule. Circumstances relevant in determining the reasons for entering into the agreement may include the particular person's historical usage of similar exchange-traded derivatives.

Subparagraph (*b*)(ii) provides that the definition does not include one or more agreements or other arrangements that would otherwise be a synthetic equity arrangement, in respect of a share owned by the particular person (such agreements or other arrangements are referred to in this subparagraph of the definition as the "synthetic short position"), if:

- the particular person has entered into one or more other agreements or other arrangements (other than, for greater certainty, an agreement under which the share is acquired or an agreement or arrangement under which the particular person receives a deemed dividend and is provided with all or substantially all of the risk of loss and opportunity for gain or profit in respect of the share) that have the effect of providing all or substantially all of the risk of loss and opportunity for gain or profit in respect of the share to the particular person (such other agreements or other arrangements are referred to in subparagraph (*b*)(ii) of the definition as the "synthetic long position");
- the synthetic short position has the effect of offsetting all amounts included or deducted in computing the income of the particular person with respect to the synthetic long position; and
- the synthetic short position was entered into for the purpose of obtaining the effect described above.

Subparagraph (*b*)(ii) applies on a share-per-share basis.

Subparagraph (*b*)(iii) of the definition excludes certain ordinary course share purchase transactions from being characterized as a synthetic equity arrangement. More specifically, this subparagraph provides that the definition does not include an agreement to purchase the shares of a corporation, or a purchase agreement that is part of a series of agreements to purchase the shares of a corporation, under which a counterparty or a group of counterparties each member of which is affiliated with every other member acquires control of the corporation that has issued the shares being purchased.

However, this exception will not be available where the main reason for establishing, incorporating or operating the corporation is to have subparagraph (*b*)(iii) of the definition apply. This anti-avoidance rule and the requirement that the acquisition of control must be with respect to the corporation that has issued the shares being purchased are intended to ensure that only ordinary corporate acquisitions qualify for the exception.

*Example – Total Return Swap*

*A taxable Canadian corporation (the "Taxpayer") owns 200 shares of ABC Co. On June 15, 2016, the Taxpayer enters into a one-year cash-settled total return swap that references 200 shares of ABC Co. with an entity that is exempt from tax under Part I of the Act (the "Tax-Exempt").*

*Under the total return swap:*

- *the Taxpayer agrees to pay the Tax-Exempt an amount equivalent to the dividends received on the 200 shares of ABC Co. plus an amount equal to any increase in the fair market value of these shares during the term of the total return swap; and*
- *the Tax-Exempt agrees to pay the Taxpayer an amount determined by applying an interest rate to the notional amount of the total return swap plus an amount equal to any decrease in the fair market value of the 200 shares during the term of the total return swap.*

*The total return swap entered into between the Taxpayer and the Tax-Exempt is a synthetic equity arrangement in respect of the 200 shares of ABC Co., as it has the effect of providing all of the risk of loss and opportunity for gain or profit in respect of the 200 shares of ABC Co. to the Tax-Exempt.*

*Example – Forward Contract*

*A taxable Canadian corporation (the "Taxpayer") owns 400 shares of ABC Co. On September 15, 2016, the Taxpayer enters into a one-year cash-settled forward contract with an entity that is exempt from tax under Part I of the Act (the "Tax-Exempt") where the Taxpayer agrees to sell and the Tax-Exempt agrees to purchase 400 shares of ABC Co. in one year.*

*The settlement amount under the forward contract is based on the difference between the fair market value of the 400 shares of ABC Co. measured at maturity and the agreed-upon forward price of the 400 shares of ABC Co. This forward price is the spot price of the shares on the date the contract is entered into plus a market interest rate applied to the spot price over the term of the contract minus the amount of the expected dividends on the shares over the term of the contract.*

*The forward contract entered into between the Taxpayer and the Tax-Exempt is a synthetic equity arrangement in respect of the 400 shares of ABC Co., as it has the effect of providing all or substantially all of the risk of loss and opportunity for gain or profit in respect of the 400 shares of ABC Co. to the Tax-Exempt.*

*Example – Put-Call Arrangement*

*A taxable Canadian corporation (the "Taxpayer") owns 600 shares of ABC Co. On November 1, 2016, the Taxpayer purchases a put option from an entity that is exempt from tax under Part I of the Act (the "Tax-Exempt") allowing it to sell 600 shares of ABC Co. to the Tax-Exempt at a strike price equal to the spot price of the shares on the date the option is entered into plus a market interest rate applied to the spot price over the term of the option minus the amount of the expected dividends on the shares over the term of the option. Simultaneously, another taxable Canadian corporation which does not deal at arm's length with the Taxpayer (the "Subsidiary")* *sells a call option to the Tax-Exempt allowing it to purchase 600 shares of ABC Co. from the Subsidiary at the same strike price as the put option. Both options are European style, that is, they are exercisable on the same date in the future. The Subsidiary has full knowledge of the put option purchased by the Taxpayer.*

*If the value of the 600 shares is above the strike price on the exercise date, the Tax-Exempt will exercise the call option and receive the difference between the fair market value of the shares and the strike price. Conversely, if the value of the shares is below the strike price on the exercise date, the Taxpayer will exercise the put option and receive the difference between the fair market value of the shares and the strike price.*

*The put-call arrangement entered into by the Taxpayer and the Subsidiary with the Tax-Exempt is a synthetic equity arrangement in respect of the 600 shares of ABC Co. as it has the effect of providing all or substantially all of the risk of loss and opportunity for gain or profit in respect of the 600 shares of ABC Co. to the Tax-Exempt.*

*Example – Offsetting Synthetic Position*

*A taxable Canadian corporation (the "Taxpayer") owns 200 shares of ABC Co. On November 1, 2016, the Taxpayer enters into a two-year cash-settled total return swap that references 200 shares of ABC Co. with another taxable Canadian corporation in which the Taxpayer takes a long position (i.e., it acquires economic exposure to an additional 200 ABC Co. shares).*

*On the same day, the Taxpayer then enters into a two-year cash-settled total return swap that references 200 shares of ABC Co. with an entity that is exempt from tax under Part I of the Act (the "Tax-Exempt") in which the Taxpayer takes a short position.*

*The short position that the Taxpayer has taken under the two-year cash-settled total return swap with the Tax-Exempt would normally be a synthetic equity arrangement in respect of the 200 shares of ABC Co. owned by it. However, it would be excluded under subparagraph (b)(ii) of the definition "synthetic equity arrangement". In effect, the short swap position would be considered to offset the long swap position rather than the directly owned shares.*

For further information, see the commentary on new paragraph (*c*) of the definition "dividend rental arrangement" in subsection 248(1) of the Act.

This amendment is deemed to have come into force on April 22, 2015.

**"synthetic equity arrangement chain"**

The definition "synthetic equity arrangement chain" is added to subsection 248(1) of the Act. A "synthetic equity arrangement chain", in respect of a share owned by a person or partnership, means a synthetic equity arrangement – or a synthetic equity arrangement in combination with one or more specified synthetic equity arrangements – where:

- no party to the synthetic equity arrangement or a specified synthetic equity arrangement, if any, is a tax-indifferent investor; and
- each other party to these agreements or arrangements is affiliated with the person or partnership.

The definition is relevant for the purposes of paragraph 112(2.32)(*d*) of the Act, which allows the last party in a synthetic equity arrangement chain to obtain the representations required to satisfy the condition in paragraph 112(2.31)(*b*).

For further information, see the commentary on the definitions "synthetic equity arrangement" and "specified synthetic equity arrangement" in subsection 248(1), and on subsections 112(2.31) and (2.32).

This amendment is deemed to have come into force on April 22, 2015.

**"tax-indifferent investor"**

The definition "tax-indifferent investor" is added to subsection 248(1) of the Act. Paragraph 112(2.31)(*b*) provides an exception to the inter-corporate dividend deduction denial rule in subsection 112(2.3) where a taxpayer can establish that no tax-indifferent investor or group of tax-indifferent investors, each member of which is affiliated with every other member, has all or substantially all of the risk of loss and opportunity for gain or profit in respect of a share because of a synthetic equity arrangement or a specified synthetic equity arrangement. The notion of "tax-indifferent investor" therefore essentially limits the application of subsection 112(2.3) to dividends received on DRA shares for which there is a synthetic equity arrangement or a specified synthetic equity arrangement entered into with certain counterparties that do not pay any Canadian income tax on the dividend-equivalent amounts received under the arrangement, namely, persons exempt from tax under section 149 of the Act, certain non-resident persons and trusts or partnerships of which such persons are, directly or indirectly, beneficiaries or members.

Paragraphs (*a*) and (*b*) of the definition refer respectively to a person exempt from tax under section 149 and a non-resident person, other than a person to which all amounts paid or credited under a synthetic equity arrangement or a specified synthetic equity arrangement may reasonably be attributed to the business carried on by the person in Canada through a permanent establishment.

Paragraph (*c*) of the definition refers to a trust resident in Canada (other than a specified mutual fund trust) if any of the interests as a beneficiary under the trust is not a fixed interest in the trust (such a trust is referred to in the definition as a "discretionary trust").

Paragraphs (*d*) and (*e*) of the definition provide look-through rules where the counterparty to the synthetic equity arrangement or the specified synthetic equity arrangement is a partnership or a trust resident in Canada (other than a specified mutual fund trust or a discretionary trust described in paragraph (*c*)).

For further information, see the commentary on subsections 112(2.3), (2.31) and (2.32).

This amendment is deemed to have come into force on April 22, 2015.

**Synthetic Equity Arrangements – Disaggregation**

ITA
248(42)

New subsection 248(42) of the Act disaggregates an arrangement that references a portfolio of shares or an index of shares into separate arrangements for each type of identical share (as defined in new subsection 112(10) of the Act) referenced under the initial arrangement.

Subsection 248(42) provides that, for the purposes of the new definition "synthetic equity arrangement" in subsection 248(1) of the Act, new paragraphs (*c*) and (*d*) of the definition "dividend rental arrangement" in that subsection and new subsections 112(2.31), (2.32) and (10) of the Act, an arrangement that reflects the fair market value of more than one type of identical share is considered to be a separate arrangement in respect of each type of identical share the value of which the arrangement reflects.

*Example*

*A taxable Canadian corporation (the "Taxpayer") owns 100 shares of ABC Co., 200 shares of DEF Co. and 150 shares of GHI Co. On August 15, 2016, the Taxpayer enters into a one-year cash-settled total return swap that references 100 shares of ABC Co., 100 shares of DEF Co. and 100 shares of GHI Co. with an entity that is exempt from tax under Part I of the Act (the "Tax-Exempt").*

*On August 31, 2016, ABC Co. declares a dividend of $1 per share, DEF Co. declares a dividend of $2 per share and GHI Co. declares a dividend of $2 per share, all with a record date of September 2, 2016 and a payment date of September 5, 2016.*

*Under the total return swap, the Taxpayer is obligated to pay a dividend-equivalent amount of $500 to the Tax-Exempt. Given that there will be a separate synthetic equity arrangement in respect of each of the three kinds of identical shares referenced under the total return swap, the Taxpayer will have a "dividend rental arrangement" in respect of the shares of each of these corporations.*

*The Taxpayer will be denied an inter-corporate dividend deduction on all of the $100 dividends (100/100 x $100) received from ABC Co., on $200 (100/200 x $400) of the $400 dividends received from DEF Co. and on $200 (100/150 x $300) of the $300 dividends received from GHI Co.*

For further information, see the commentary on new subsections 112(2.31), (2.32) and (10), and on new paragraph (*c*) of the definition "dividend rental arrangement" in subsection 248(1) and the new definition "synthetic equity arrangement" in that subsection.

This amendment is deemed to have come into force on April 22, 2015.

**Clause 49**

**Investments in limited partnerships**

ITA
253.1

Section 253.1 of the Act applies for specified provisions of the Act and *Income Tax Regulations* where a trust or corporation holds an interest as a limited partner in a limited partnership. It provides that the trust or corporation will not, solely because of its acquisition and holding of the limited partnership interest, be considered to carry on any business or other activity of the partnership.

Section 253.1 is amended in two respects. First, the existing rules are renumbered and included in new subsection 253.1(1). Second, new subsection 253.1(2) is introduced.

New subsection 253.1(2) provides that where a registered charity or registered Canadian amateur athletic association (RCAAA) holds an interest as a limited partner in a limited partnership, it will not be considered, solely because of its acquisition or holding of the limited partnership interest, to carry on any business or other activity of the partnership if certain conditions are met. New subsection 253.1(2) applies for the purposes of section 149.1 (which provides the rules that must be met for charities to obtain and keep registered status) and subsections 188.1(1) and (2) (which, in general terms, determine the tax liability of a registered charity in respect of the revocation of the charity's registration). The specific conditions that must be met for the provision to apply are:

- by operation of any law governing the arrangement in respect of the partnership, the liability of the registered charity or RCAAA as a member of the partnership must be limited;
- the registered charity or RCAAA must deal at arm's length with each general partner of the partnership; and
- the registered charity or RCAAA, or the registered charity or RCAAA together with persons and partnerships with which it does not deal at arm's length, cannot hold interests in the partnership that have a fair market value of more than 20% of the fair market value of the interests of all members of the partnership.

This amendment applies in respect of investments in limited partnerships that are made or acquired after April 20, 2015.

## Children's Special Allowances Act

### Clause 50

### Interpretation

Children's Special Allowances Act
2.1

Section 2.1 of the *Children's Special Allowances Act* (CSA) is repealed as of July 1, 2017.

**Clause 51**

**Monthly special allowance supplement**

CSA
3.1

Subparagraph 3.1(1)(*a*)(ii) of the CSA provides for a monthly special allowance supplement payable for each month as of January 1, 2015 for each child who, at the beginning of that month, is under six years of age. Paragraph 3.1(1)(*b*) of the CSA provides for a monthly special allowance supplement payable for each month as of January 1, 2015 for each child who, at the beginning of that month, is six years of age or older.

Consequential to the introduction of the new Canada Child Benefit, subparagraph 3.1(1)(*a*)(ii) and paragraph 3.1(1)(*b*) are amended to provide that no special allowance supplements are payable under the CSA in respect of a month that is after June, 2016.

This measure comes into force on July 1, 2016.

Section 3.1 of the CSA is repealed as of July 1, 2017.

**Clause 52**

**Monthly special allowance supplement**

CSA
8

Subsection 8(1) of the CSA provides for a monthly special allowance payable in respect of a child. This allowance is currently based on the Canada child tax benefit and national child benefit in subsection 122.61(1) of the *Income Tax Act*. Consequential to the introduction of the new Canada child benefit, this subsection is amended to provide that the monthly special allowance payable in respect of a child will be the amount determined by the description of E in subsection 122.61(1) of the Income Tax Act (the new Canada child benefit) in respect of that child.

Paragraph 8(1)(*c*) of the CSA also provides for a monthly special allowance payable if an amount may be deducted under section 118.3 of the *Income Tax Act* in respect of the child. Paragraph 8(1)(*c*) of the CSA is amended to clarify that the deduction under section 118.3 of the *Income Tax Act* is an annual determination.

This measure comes into force on July 1, 2016.

## Universal Child Care Benefit Act

**Clause 53**

**Amount of payment**

Universal Child Care Benefit Act
4

Subsection 4(1.1) of the *Universal Child Care Benefit Act* (UCCB) provides for a monthly benefit payable to an eligible individual for each month as of January 1, 2015 for each child who, at the beginning of that month, is under six years of age and is a qualified dependant of the eligible individual. Subsection 4(1.2) of the UCCB provides for a monthly benefit payable to an eligible individual for each month as of January 1, 2015 for each child who, at the beginning of that month, is six years of age or older and is a qualified dependant of the eligible individual.

Consequential to the introduction of the new Canada child benefit, subsections 4(1.1) and (1.2) are amended to provide that no benefits are payable under the UCCB in respect of a month that is after June, 2016.

This measure comes into force on July 1, 2016.

## Income Tax Regulations

### Clause 55

### Remuneration and benefits

ITR
200(1)

Under subsection 200(1) of the *Income Tax Regulations*, a taxpayer who makes a payment described in subsection 153(1) of the *Income Tax Act* is generally required to make an information return in prescribed form.

Consequential to amendments to paragraph 153(1)(*a*) of the Act, subsection 200(1) is amended to ensure that payments made in respect of salary, wages or other remuneration by a non-resident employer to a non-resident employee that are exempt from withholding because of new subparagraph 153(1)(*a*)(ii) continue to be subject to the requirement in subsection 200(1) to make an information return unless new subsection 200(1.1) applies.

New subsection 200(1.1) excludes from subsection 200(1) the requirement for a taxpayer to make an information return in two specific situations. The first situation is when an annuity payment in respect of an interest in an annuity contract to which subsection 201(5) applies is paid. This exception was previously part of subsection 200(1). The second situation is when an amount is paid by a qualifying non-resident employer to a qualifying non-resident employee exempted from the withholding requirement under subparagraph 153(1)(*a*)(ii) of the Act if, after reasonable inquiry, the qualifying non-resident employer has no reason to believe that the employee’s total taxable income earned in Canada under Part I of the Act (including amounts described in paragraph 110(1)(*f*) of the Act such as amounts that are exempted from income tax in Canada because of a provision contained in a tax treaty that has the force of law in Canada) in the calendar year during which the payment is made is more than $10,000 in Canadian dollars or its equivalent in foreign currency.

This amended subsection applies in respect to payments made after 2015.

**Clause 56**

**Tax deduction information**

ITR
210

Consequential to amendments to paragraph 153(1)(*a*) of the Act, section 210 of the *Income Tax Regulations* is amended to ensure that a qualifying non-resident employer (as defined in subsection 153(6) of the Act) is subject to section 210 in respect of its payments in respect of salary, wages or other remuneration to a qualifying non-resident employee (as defined in subsection 153(6) of the Act).

This amended section applies in respect of payments made after 2015.

**Clause 57**

**Prescribed labour-sponsored venture capital corporation**

ITR

6701.1

Section 6701 of the *Income Tax Regulations* prescribes, for certain purposes of the Act, that corporations that are established or registered under certain provincial statutes, or are registered under section 204.81 of the Act, will be considered “prescribed labour-sponsored venture capital corporations” (prescribed LSVCCs).

Section 6701.1 was added, concurrent with the phase-out of the labour-sponsored funds tax credit, to prevent a corporation that has not submitted its application for registration under one of the provincial statutes listed in section 6701 prior to March 21, 2013 from qualifying as a prescribed LSVCC for the purposes of the labour-sponsored funds tax credit.

Section 6701.1 of the *Income Tax Regulations* is repealed effective March 22, 2016.

**Clause 58**

ITR
8201

Section 8201 of the *Income Tax Regulations* provides a definition of the term “permanent establishment” for the purposes of various provisions in the Act.

This section is amended to add a reference to the new definition “tax-indifferent investor” in subsection 248(1) of the Act.

This amendment is deemed to have come into force on April 22, 2015.

**Clause 59**

ITR
Part XCIV
**Prescribed Children's Programs**

Part XCIV of the *Income Tax Regulations* prescribes certain programs of physical activity for purposes of the child fitness tax credit under section 122.8 of the Act and certain programs of artistic, cultural, recreational or developmental activity that qualify for purposes of the children's arts tax credit under section 118.031 of the Act.

Consequential to the repeal of the child fitness tax credit and the children's arts tax credit, this Part is repealed for the 2017 and subsequent taxation years.

**Clause 60**

**Prescribed Durable Goods**

ITR
9600

New Part XCIV of the Regulations prescribes (in section 9600) certain durable goods that qualify as teaching supplies for purposes of the school supplies tax credit under section 122.9 of the Act. The prescribed durable goods are: books, games and puzzles, containers and support software.

This amendment applies to the 2016 and subsequent taxation years.

**Coordinating Amendments**

**Clause 61**

Consistent with the restoration of the labour-sponsored funds tax credit for provincially prescribed LSVCCs, clause 61 repeals subsections 59(1), (4), (6) and (7) of *Economic Action Plan 2013, No. 2*. These subsections of the *Economic Action Plan 2013 Act, No. 2* would have repealed the labour sponsored funds tax credit and related provisions for the 2017 and subsequent taxation years.

**For more information, see the commentary for subsections 127.4(5) and (6) of the Act.**

**Clause 62**

**Relevant tax factor**

ITA
95(1)

The definition "relevant tax factor" in subsection 95(1) of the Act is used in determining the Canadian tax relief provided in respect of foreign taxes imposed on the earnings of a foreign affiliate of a taxpayer. The existing definition provides that the relevant tax factor for a corporation (or a partnership all the resident members of which are corporations) is the reciprocal of the basic corporate tax rate (i.e., 1/.38, or 2.63). The factor for individuals and for other partnerships is 2.2.

Consequential to the new top personal marginal income tax rate of 33%, the relevant tax factor for individuals and for other partnerships is decreased to 1.9.

This measure applies to the 2016 and subsequent taxation years.

**Deduction by individuals for gifts**

ITA
118.1(3)

Section 118.1 of the Act provides a tax credit to individuals (including trusts) for gifts made to registered charities and certain other qualified donees. The amount of the credit is determined under subsection 118.1(3). For the 2015 taxation year, the credit is calculated as 15% of the first $200 of such gifts and 29% (i.e., the top personal tax rate) of gifts above that amount.

Subsection 118.1(3) is amended consequential to the introduction of a new top personal income tax rate ("the highest individual percentage") in subsection 117(2). The highest individual percentage is 33% for the 2016 and later taxation years.

Amended subsection 118.1(3) will apply a new tax credit rate equal to the highest individual percentage to the extent that the individual's total gifts for the year exceed $200 and to the extent that the individual has income that is subject to the top marginal tax rate. In particular:

- For trusts to which section 122(1) applies in computing tax payable for a year to impose tax at a flat rate equal to the highest individual percentage, the new tax credit rate (33% for the 2016 taxation year) will apply to total gifts in excess of $200.
- For individuals (including graduated rate estates and qualified disability trusts) to which section 117 applies in computing tax payable for a year to impose tax at the highest individual percentage only on taxable income above a certain threshold ($200,000 for the 2016 taxation year), the new tax credit rate (33% for the 2016 taxation year) will apply to total gifts in excess of $200, to the extent the individual has taxable income above that threshold.

The new tax credit rate, which is computed under variables C and D of the formula in amended subsection 118.1(3), applies only to the extent that the individual's total gifts for the year are made after the 2015 taxation year.

Amended subsection 118.1(3) continues to apply a 29% tax credit rate for a year to the extent that an individual's total gifts for the year exceed $200 and the new tax credit rate under C and D of the formula does not apply. The 29% tax credit rate, which is computed under variables E and F of the formula in the amended subsection, applies to the extent that an individual's total gifts for the year in excess of $200 consist of gifts made in the individual's 2015 or earlier taxation years or gifts made in the individual's 2016 or later taxation years where the new tax credit rate does not apply. A trust or estate to which section 122(1) applies for a year does not qualify for the 29% tax credit for the year except to the extent that its total gifts for the year exceed $200 and include gifts made before the start of its 2016 taxation year.

This amendment applies to the 2016 and subsequent taxation years.

**Tax Payable by *inter vivos* Trust**

ITA
122(1)

Section 122 of the Act sets out certain rules that apply in determining the tax payable by a trust under Part I of the Act.

Paragraph 122(1)(*c*) provides for a "recovery" of tax in a taxation year of a trust that elected in an earlier taxation year to be a qualified disability trust. The amount payable is determined by a formula. Subparagraph (i) of the description of variable A of the formula currently computes an amount by reference to an assumed rate of tax of 29%. The "29%" figure is based upon a top individual income tax rate of 29%.

This subparagraph is amended to reflect the new top personal tax rate of 33%. The amendment replaces the reference to 29% with a reference to the highest individual percentage (33% for 2016) for the taxation year.

This amendment applies to the 2016 and subsequent taxation years.

**Tax on personal services business income**

ITA
123.5

New section 123.5 of the Act imposes an additional amount of tax under Part I on the income of a corporation earned from a personal services business. This additional amount ensures that the rate applicable to this income is not less than the top marginal income tax rate that applies to individuals.

In general terms, the tax otherwise payable under Part I by a corporation on income from a personal services business is equal to 28% of that income because such income is not eligible for the federal general corporate tax rate reduction or the small business deduction.

Under new section 123.5, a corporation must add to its tax otherwise payable for a year under Part I an amount equal to 5% of the corporation's taxable income for the year from a personal services business. This amendment is made consequential to the increase in the top personal income tax rate to 33%, which applies to taxable income exceeding $200,000, for the 2016 and subsequent taxation years.

This amendment applies to the 2016 and subsequent taxation years. The additional tax under this amendment is prorated for taxation years of corporations that overlap 2015 and 2016.

**Mutual fund trust**

ITA
132(1)

Section 132 of the Act contains special rules relating to the taxation of mutual fund trusts.

ITA

132(1)

A mutual fund trust pays tax each year on the capital gains that it realizes and does not distribute to its investors. Capital gains that are realized and distributed in the same year are taxed in the investors' hands. These rules prevent a deferral of tax on realized capital gains. However, to ensure that those capital gains are taxed only once, and at the investors' effective rates of tax, a mutual fund trust's capital gains tax for a taxation year is refunded to it in a later year to the extent that it distributes those capital gains to its beneficiaries through the redemption of its units. This special refund regime for mutual fund trusts is intended to operate as an integration, not a deferral, mechanism.

Subsection 132(1) of the Act computes a mutual fund trust's capital gains refund as the lesser of two amounts. The first amount is determined by multiplying the trust's capital gains redemptions for the year by the trust's tax rate on capital gains. This rate is currently 14.5%. The 14.5% rate is based on the top personal tax rate of 29%, and a capital gains inclusion rate of one-half.

Subsection 132(1) is amended consequential on the increase in the top personal tax rate from 29% to 33%. Specifically, clause 132(1)(*a*)(i)(A) is amended to replace "14.5%" with "16.5%". In addition, clause 132(1)(*a*)(i)(B) is amended to permit the Minister of National Revenue, in computing a trust's capital gains refund for a year, to account for both decreases and increases in the relevant tax and inclusion rates from earlier years.

These amendments apply to the 2016 and subsequent taxation years.

ITA
132(4)

Subsection 132(4) of the Act defines a number of terms for purposes of section 132.

**"capital gains redemptions"**

A mutual fund trust's capital gains redemptions for a taxation year are used in determining its capital gains refund for the year. In computing the amount the trust must allocate across all payments made on a redemption of trust units, its accrued capital gains and its previously realized but undistributed realized net capital gains. The definition applies a formula, variable C of which computes the previously realized but undistributed realized net capital gains by multiplying the trust's refundable capital gains tax on hand at the end of the year by the reciprocal of the tax rate applied to such gains. The reciprocal is currently expressed as "100/14.5". This reflects a top personal tax rate of 29%, and a capital gains inclusion rate of one-half.

The description of C in the definition is amended consequential on the increase in the top personal tax rate from 29% to 33%, and the resulting increase in the capital gains tax rate of mutual fund trusts from 14.5% to 16.5%. Specifically, the reference to "100/14.5" is changed to "100/16.5".

This amendment applies to the 2016 and subsequent taxation years.

**"refundable capital gains tax on hand"**

A mutual fund trust's refundable capital gains tax on hand at the end of a taxation year is, in general terms, the amount by which the capital gains tax the trust paid for the current and previous years exceeds its capital gains tax refunded in previous tax years. The definition applies a formula that in turn relies on the top personal tax rate. The rate currently used is 29%.

The definition is amended consequential on the increase in the top personal tax rate from 29% to 33%. In computing a trust's refundable capital gains tax on hand, to the extent that an amount is determined in the formula with reference to a 2016 or later taxation year, the formula now applies the highest individual percentage. This is 33% for those taxation years. To the extent that an amount is determined in the formula with reference to a 2015 or earlier taxation year, the reference to 29% is maintained.

This amendment applies to the 2016 and subsequent taxation years.

**Amateur Athlete Trusts**

ITA
143.1(3) and (4)

Section 143.1 of the Act provides for the tax treatment of certain amounts received by or on behalf of an individual who is an amateur athlete and held under a qualifying arrangement. Property held under the arrangement is deemed to be held by a trust (i.e., the amateur athlete trust) and the individual is deemed to be the beneficiary of the trust. Amounts distributed from the trust are included in the individual's income for the individual's taxation year in which the distribution is made.

For this purpose, subsections 143.1(3) and (4) deem a distribution from the trust to the individual to occur at the earlier of two times: the time immediately before the death of the beneficiary and the time that is the end of the trust's taxation year in which ends the deferral period available in respect of the arrangement ends. If Part XII.2 tax applies to the trust in respect of its taxation year in which the distribution time occurs (i.e., generally, if the individual is non-resident at any time in that taxation of the trust), paragraphs 143.1(3)(c) and (4)(a), respectively, deem the amount of the deemed distribution to be 64% of the fair market value of all property held by the trust at the distribution time. This amount is included in computing the individual's income for the individual's taxation year that includes the distribution time.

Those paragraphs are amended, consequential to an increase in the Part XII.2 tax rate, to replace the reference to 64% with a reference to 60%. This amendment ensures that the tax rules apply to subject the trust to a 40% effective tax rate, where Part XII.2 applies in respect of the distribution, on the fair market value of all of the trust's property held at a distribution time determined under subsection 143.1(3) or (4). For more information, see the commentary under subsection 210.2(2).

This amendment applies to the 2016 and subsequent taxation years.

**Excess EPSP amount**

ITA
207.8(2)

Subsection 207.8(2) of the Act imposes a special tax on a specified employee who has an excess Employee Profit Sharing Plan (EPSP) amount for a taxation year. The tax payable on the excess EPSP amount is variable A, currently 29%, plus one of three rates set out in the description of variable B. Subsection 207.8(2) is amended to change variable A from 29% to “the highest individual percentage for the year”. Starting January 1, 2016, the highest individual percentage is 33%. For more information on the definition “highest individual percentage”, see the notes to subsection 248(1) of the Act.

This amendment applies to the 2016 and subsequent taxation years.

**Tax on income of trust**

**Part XII.2**

Part XII.2 of the Act imposes a special tax on certain income distributions made by certain trusts resident in Canada. Part XII.2 tax applies to a trust for a year only if the trust has a designated beneficiary in the year. A designated beneficiary in the year includes a beneficiary that is non-resident at any time in the year.

ITA
210.2(1)

Subsection 210.2(1) of the Act provides that a trust is liable for Part XII.2 tax for a taxation year of the trust if certain amounts (“beneficiary amounts”) in respect of the trust’s income are required under Part I to be included in computing the income of any of its beneficiaries. In this case, Part XII.2 tax is generally imposed at a rate of 36% of the trust’s designated income. However, if the beneficiary amounts for the year are less than 64% of the designated income, the 36% rate is applied to a gross-up of the amount deducted by the trust in computing its income for the year. The gross-up is 100/64, which accounts for the requirement under subsection 104(30) to deduct, in computing the trust’s income, the Part XII.2 tax paid by the trust.

Subsection 210.2(1) is amended to increase the rate that applies under that subsection from 36% to 40%. This amendment is consequential on the increase in the top personal tax rate under Part I from 29% to 33%. This amendment provides for a total effective rate of federal tax of approximately 49% on designated income distributed to designated beneficiaries (assuming Part XIII tax applies at a rate of 15% on the distributions). This effective rate approximates the rate of federal tax of 48.84% that would apply if a top rate non-resident individual (including a non-resident trust) earned the income directly. In this case, the non-resident would pay Part I tax at the top personal tax rate of 33%, and federal surtax in lieu of provincial income tax at an effective rate of 15.84%, on the income.

Paragraph 210.2(1)(c) and the opening words of subsection 210.2(1) are also amended to reflect that the subsection applies to a trust for the year only to the extent that a beneficiary amount is deducted under paragraph 104(6)(b) by the trust in computing its income for the year.

These amendments apply to the 2016 and subsequent taxation years.

ITA
210.2(2)

Subsection 210.2(2) of the Act provides that an amateur athlete trust is liable for tax under Part XII.2 for a taxation year if the trust's beneficiary is non-resident at any time in the year and the beneficiary is required by subsection 143.1(2) to include an amount in income for the beneficiary's taxation year in which the trust's year ends. In this case, Part XII.2 tax is imposed at rate of 56.25% of that amount. However, the effective rate of Part XII.2 tax is 36% of the fair market value of all of the trust's property (i.e., this property representing the income deferred under the amateur athlete trust rules) held at a distribution time determined under subsection 143.1(3) or (4). This is because those subsections deem only 64% of that value to be included in the beneficiary's income for the beneficiary's year where the trust is liable for Part XII.2 tax for the relevant trust year.

Subsection 210.2(2) is amended to increase the rate that applies under that subsection from 56.25% to two-thirds. This amendment is consequential on the increase to 33% of the top personal tax rate under Part I. This amendment results in a 40% effective Part XII.2 tax rate on the fair market value of all of the trust's property (i.e., the income deferred under the amateur athlete trust rules) held for the beneficiary at a distribution time determined under subsection 143.1(3) or (4). The total effective rate of federal tax in respect of the distribution is approximately 49% (assuming Part XIII tax applies at a rate of 15% on the amounts deemed to be distributed at a time determined under subsection 143.1(3) or (4) where Part XII.2 tax applies).

This effective rate approximates the 48.84% federal tax rate that would apply if a top rate non-resident individual earned the income directly. In this case, the non-resident would pay Part I tax at the top personal tax rate of 33%, and federal surtax in lieu of provincial income tax at an effective rate of 15.84%, on the income.

This amendment applies to the 2016 and subsequent taxation years.

**Part 2 – Amendments to the Excise Tax Act (GST/HST Measures)**

## Excise Tax Act

### Clause 63

### Exclusion of interest

ETA
149(4.02) and (4.03)

New subsection 149(4.02) of the *Excise Tax Act* (the "Act") excludes certain deposit interest in determining whether a person is a financial institution under the *de minimis* test in paragraph 149(1)(c) of the Act. Specifically, in determining a total under that paragraph, a person does not include interest from another person in respect of a deposit of money if the following conditions are met. The first requirement is that the deposit of money must be received or held by the other person in the usual course of its deposit-taking business. The second requirement is that the other person must be a bank, a credit union, a corporation authorized under the laws of Canada or a province to carry on the business of offering to the public its services as a trustee, or a corporation authorized under the laws of Canada or a province to accept deposits from the public and that carries on the business of lending money on the security of real property or investing in indebtedness on the security of mortgages or hypothecs on real property. The third requirement is satisfied if the other person is obligated, or may by the demand of the depositor become obligated, to repay the money on or before the day that is 364 days after the day on which the deposit of money is made.

New subsection 149(4.03) of the Act contains special rules that apply for the purpose of paragraph 149(4.02)(b) in respect of a deposit of money made by a person (the "depositor") with another person. The rules apply in determining whether the other person is obligated, or may by the demand of the depositor become obligated, to repay the money on or before the day that is 364 days after the day on which the deposit of money is made.

The rule contained in new paragraph 149(4.03)(a) applies if the other person is obligated to repay the money to the depositor on a fixed day and also is or may become obligated to repay the money on an earlier day by virtue of a right of withdrawal, reinvestment or other right afforded to the depositor by the terms under which the money was solicited or received or is held. In such cases, only the obligation to repay on the fixed day is to be considered, regardless of whether the right is exercised or not. For example, consider a guaranteed investment certificate with a two year term that permits the depositor to demand repayment of the full amount of the principal at any time during the term. By operation of paragraph 149(4.03)(a), any interest paid to a person in respect of such a deposit would not be excluded by subsection 149(4.02), even if the deposit was repaid after only 6 months. Therefore, that interest would be considered in determining whether the person is a financial institution under the *de minimis* test in paragraph 149(1)(c).

The rule contained in new paragraph 149(4.03)(b) applies if the other person is obligated to repay the money to the depositor on a fixed day and also is or may become obligated to repay the money on a later day by virtue of a right afforded to any person to extend the term of the deposit at a rate or rates of interest determined at the time the money was solicited or received. In such cases, only the obligation to repay on the later day is to be considered, regardless of whether the right is exercised or not. For example, consider a six-month term deposit that may be extended by another six months at an interest rate that was fixed at the time the deposit was first made. By operation of paragraph 149(4.03)(b), any interest paid to a person in respect of such a deposit would not be excluded by subsection 149(4.02), even if the deposit was not extended for the second six-month term. Therefore, that interest would be considered in determining whether the person is a financial institution under the *de minimis* test in paragraph 149(1)(c).

This amendment applies for the purpose of determining if a person is a financial institution throughout the person’s taxation years that begin on or after March 22, 2016. It also applies for the purpose of determining if a person is a reporting institution under section 273.2 of the Act throughout the person’s fiscal year that begins before March 22, 2016 and that ends on or after that day.

**Clause 64**

**Donations – value of consideration**

ETA
164

New section 164 of the Act provides rules that, subject to certain conditions, result in reducing the tax otherwise payable under Part IX of the Act in respect of a taxable supply of property or a service made by a charity or a public institution to a donor where the value of the donation exceeds the value of the property or service.

The first condition that must be met for section 164 to apply is that the value of the property or service supplied by the charity or public institution to the donor be included in determining the amount of the advantage in respect of a gift by the donor to the charity or public institution under subsection 248(32) of the *Income Tax Act*. Subsection 248(32) is part of the income tax rules in respect of gifts to charities that are commonly referred to as the “split-receipting rules”. Subsection 248(32) generally describes the amount of an advantage in respect of a gift as the total value of all property, services, compensation or other benefits to which a donor is entitled in respect of the gift. The amount of the advantage reduces the eligible amount of a gift made to a donee for the purposes of that Act.

The second condition that must be met is that a receipt referred to in subsection 110.1(2) (pertaining to gifts made by corporations to qualified donees) or 118.1(2) (pertaining to gifts made by individuals) of that Act may be issued, or could be issued if the donor were an individual, in respect of part of the gift.

Where the conditions are met, the value of the consideration for the taxable supply is deemed to be equal to the fair market value of the property or service at the time the supply is made.

New section 164 applies to any supply made after March 22, 2016. New section 164 also applies to some supplies (“past supplies”) made by a charity or public institution on or before March 22, 2016, but after December 20, 2002, which generally corresponds with the coming into force of the amendments to the *Income Tax Act* that introduced the split-receipting rules.

Unless the special transitional rule (for advantages with a value of less than $500) described below applies, new section 164 also applies to a past supply made by a charity or public institution if the charity or public institution (i) did not charge, collect or remit an amount as or on account of tax under Part IX of the Act in respect of the past supply, or (ii) charged an amount of tax under Part IX of the Act that is less than the amount of tax payable under Part IX of the Act in respect of the past supply (determined without taking into account new section 164).

For a past supply of property or a service having a fair market value of less than $500 at the time the supply was made, the application rules for new section 164 include a special transitional rule that deems the past supply to have been made for no consideration (other than for certain purposes, described below) if, in addition to the same conditions found in new section 164 and described above, the charity or public institution did not, on or before March 22, 2016, (i) charge, collect or remit an amount as or on account of tax under Part IX of the Act, or (ii) charged an amount of tax under Part IX of the Act that is less than the amount of tax payable under Part IX of the Act in respect of the past supply (determined without taking into account new section 164). As a result, donors and charities will generally not be required to pay or remit additional tax in respect of these supplies. However, that deeming rule does not apply for the purposes of sections 232 and 261 of the Act, section 5 of Part V.1 of Schedule V to the Act or section 10 of Part VI of Schedule V to the Act. As a result, the rule does not allow the refund of an amount of tax that was collected by a charity or public institution or the claiming of a rebate for a payment made in error. Also, the supplies to which the special transitional rule apply would not count as supplies made for no consideration for the purposes of determining if all or substantially all of the charity’s or public institution’s supplies of the property or service are made for no consideration.

**Clause 65**

**Definitions**

ETA
217

Existing section 217 of the Act contains definitions that apply for the purposes of Division IV of Part IX of the Act. This includes for the purposes of sections 217.1, 217.2 and 218.01 and subsection 218.1(1.2) of the Act, all of which apply to financial institutions that are qualifying taxpayers (as described in subsection 217.1(1)).

Section 217 is amended to amend the definitions “external charge”, “loading”, “permitted deduction” and “qualifying consideration” and to add the new definitions “ceding commission” and “margin for risk transfer”. These amendments all concern supplies made to a qualifying taxpayer of a financial service (as defined in subsection 123(1) of the Act) that includes the issuance, renewal, variation or transfer of ownership of a policy of reinsurance, (including a policy of reinsurance that reinsures the risk of another policy of reinsurance, such as a policy of retrocession).

The amendments to section 217 apply to any specified year (as defined in this section) of a person that ends after November 16, 2005. However, a transitional rule applies for the purposes of applying the amendments to section 217 to the specified year of a person that includes November 17, 2005. In this case, paragraph (k) of the amended definition “permitted deduction” in section 217 should be read without reference to the term “loading” for an amount of consideration for a specified non-arm's length supply (as defined in this section) referred to in that paragraph that becomes due, or is paid without having become due, before November 17, 2005. As a result, if any amount of consideration for a specified non-arm's length supply becomes due, or is paid without having become due, after November 16, 2005, the amended definition “permitted deduction” should continue to be read with reference to the term “loading”.

A further transitional measure applies if

- in assessing under section 296 of the Act the tax payable by a qualifying taxpayer under Division IV of Part IX of the Act for a particular specified year of the qualifying taxpayer, an amount was taken into consideration as an external charge or as qualifying consideration for the particular specified year; and
- as a result of the application of these amendments to section 217, the amount or part of the amount is not qualifying consideration for any specified year of the qualifying taxpayer and is not an external charge for any specified year of the qualifying taxpayer for which an election under subsection 217.2(1) is in effect.

This transitional measure allows the qualifying taxpayer to request that the Minister of National Revenue assess, reassess, or make an additional assessment of, the net tax to take into account the effect of these amendments to section 217. This request must be made in writing and be made within one year after the day on which these amendments to section 217 receive royal assent. If a request is made, the Minister must then, with all due dispatch, consider the request and under section 296 assess, reassess or make an additional assessment of the tax payable by the qualifying taxpayer under Division IV of Part IX of the Act for the particular specified year of the qualifying taxpayer, as well as any interest, penalty or other obligation of the qualifying taxpayer. However, this assessment, reassessment or additional assessment is solely for the purpose of taking into account that the amount or the part of the amount, as the case may be, is not qualifying consideration or an external charge for the particular specified year.

**“external charge”**

The existing definition “external charge” in section 217 of the Act generally means an outlay or expense that is made by a qualifying taxpayer to acquire property or a service that is used in the qualifying taxpayer’s Canadian activities (as defined in this section). An amount of an external charge for a specified year of a qualifying taxpayer in respect of an outlay made, or expense incurred, is determined by the formula A – B. Certain outlays made, or expenses incurred, outside Canada by the qualifying taxpayer fall within the description of element A. Element B is the total of all amounts, each of which is an amount that is included in the determination of element A and that is a permitted deduction (as defined in this section) of the qualifying taxpayer for the specified year or a preceding specified year. If an amount is captured under the description of B, it may only be deducted once under that description.

Element B is amended to clarify the definition “external charge” in respect of supplies made to a qualifying taxpayer of a financial service that includes the issuance, renewal, variation or transfer of ownership of a policy of reinsurance. Element B is now the total of all amounts, each of which is an amount that is included in the determination of element A and that is described in either of new paragraphs (a) or (b) of element B. Paragraph (a) describes an amount, other than an amount that is a returned commission described in paragraph (b), that is a permitted deduction of the qualifying taxpayer for the specified year or a preceding specified year.

New paragraph (b) applies only where two conditions are met. First, a particular supply has to be made to the qualifying taxpayer of a financial service that includes the issuance, renewal, variation or transfer of ownership of a policy of reinsurance (including a policy of retrocession) in respect of one or more particular insurance policies (as defined in subsection 123(1) of the Act) that were issued by the qualifying taxpayer. Second, a particular amount in respect of the particular supply has to both be included in the amount determined under the description of element A and be any part of the value of the consideration for the particular supply.

Where paragraph (b) applies, it describes an amount (referred to as a "returned commission") that meets the following four conditions. First, the amount must be included in the particular amount in respect of the particular supply. Second, the amount must be attributable to expenses incurred exclusively in Canada by the qualifying taxpayer to issue and administer the particular insurance policies. Third, the amount must be returned to the qualifying taxpayer as a ceding commission (as defined in this section) in respect of the particular insurance policies. Finally, the amount must be required to be included under the *Income Tax Act* in computing the qualifying taxpayer's income for the specified year or for another specified year of the qualifying taxpayer, or would be so required to be included if the conditions set out in subparagraphs (a)(i) to (iii) of the description of A applied to the qualifying taxpayer.

Given the new definition "ceding commission" in this section, paragraph (b) only applies in respect of an amount paid to a qualifying taxpayer that is an insurer by another insurer (the reinsurer) under an agreement for the supply of a financial service that includes the issuance, renewal, variation or transfer of ownership of a policy of reinsurance issued by the reinsurer in respect of one or more particular insurance policies issued by the qualifying taxpayer.

Further, since paragraph (b) only describes an amount that is required to be included in the qualifying taxpayer's income under the *Income Tax Act*, paragraph (b) only describes an amount where the qualifying taxpayer, in computing its income under the *Income Tax Act*, claims a deduction in respect of the gross amount of the consideration in respect of a policy of reinsurance (and therefore includes this gross amount in element A of this definition) and separately includes in its income an amount as a ceding commission in respect of the policy of reinsurance. If the qualifying taxpayer in computing its income instead claims a deduction in respect of an amount of the consideration in respect of a policy of reinsurance that is net of the ceding commission amount (and therefore includes only this net amount in element A of this definition) and does not separately include in its income an amount as a ceding commission in respect of the policy of reinsurance, then paragraph (b) will be a nil amount in respect of the amount attributable to a ceding commission in respect of the policy of reinsurance.

**"loading"**

The existing definition "loading" in section 217 of the Act generally means any part of the value of the consideration for a supply of a financial service that is attributable to certain enumerated cost and expense items, but excludes commissions for a specified financial service (as that term is defined in this section) and certain risk estimates described in paragraphs (a) to (c) of the definition that may form part of the value of the consideration for a supply of a financial service. The portion of the consideration for a supply of a financial service that comes within the definition "loading" generally forms part of the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2) of the Act. Loading is used in the definitions “permitted deduction” and “specified derivative supply” in this section.

The definition “loading” is amended to clarify its application in respect of supplies of a financial service that includes the issuance, renewal, variation or transfer of ownership of a policy of reinsurance.

Existing paragraph (a) of the definition “loading” applies where the financial service supplied includes the issuance, renewal, variation or transfer of ownership of an insurance policy but not of any other qualifying instrument (as defined in this section). Paragraph (a) excludes from the definition “loading” the estimate of the net premium of that insurance policy. Paragraph (a) is amended so that it now excludes from the definition “loading” the total of the estimate of the net premium of the insurance policy and, where the insurance policy is a policy of reinsurance (including a policy of retrocession), the margin for risk transfer (as newly defined in this section) of the insurance policy.

Existing paragraph (c) of the definition “loading” applies where the financial service supplied includes the issuance, renewal, variation or transfer of ownership of both an insurance policy and another qualifying instrument. Paragraph (c) excludes from the definition “loading” the amount determined by the formula A + B, where element A is the net premium of the insurance policy. Element A of paragraph (c) is amended so that it is now the total of the estimate of the net premium of the insurance policy and, where the insurance policy is a policy of reinsurance (including a policy of retrocession), the margin for risk transfer of the insurance policy.

**“permitted deduction”**

The existing definition “permitted deduction” in section 217 of the Act describes the amounts that can be deducted by a qualifying taxpayer in determining an amount of qualifying consideration or of an external charge (as those terms are defined in this section), or in determining an internal charge under subsection 217.1(4) of the Act. A permitted deduction of a qualifying taxpayer for a specified year of the qualifying taxpayer means an amount that is included in any of paragraphs (a) through (m) of this definition for the specified year.

The definition “permitted deduction” is amended to add new paragraph (k.1) and to make consequential amendments to paragraph (k) in order to clarify the definition in respect of supplies made to a qualifying taxpayer of a financial service that includes the issuance, renewal, variation or transfer of ownership of a policy of reinsurance.

Existing paragraph (k) describes an amount that is consideration for a supply of a specified non-arm’s length supply. A specified non-arm’s length supply is defined in section 217 as a supply of a financial service (other than a specified derivative supply or a supply of a specified financial service, as those terms are defined in this section) made to a qualifying taxpayer as part of a transaction or series of transactions in which any participant does not deal at arm’s length with the qualifying taxpayer, provided that the supply includes the issuance, renewal, variation or transfer of ownership of a financial instrument. However, paragraph (k) excludes interest referred to in paragraph (g) and dividends referred to in paragraph (h). Further, only the portion of the consideration that does not represent loading (e.g., only the portion that is clearly and fundamentally financial in nature) is a permitted deduction under paragraph (k).

A consequential amendment is made to paragraph (k) as a result of the addition of new paragraph (k.1). In addition to excluding interest referred to in paragraph (g) and dividends referred to in paragraph (h), paragraph (k) is amended to also exclude consideration referred to in new paragraph (k.1). Paragraph (k) is also amended for clarity and consistency with other provisions of the Act.

New paragraph (k.1) describes an amount that is consideration (other than interest referred to in paragraph (g) or dividends referred to in paragraph (h)) for a specified non-arm's length supply made to a qualifying taxpayer of a financial service of issuing, renewing, varying or transferring the ownership of a policy of reinsurance (including a policy of retrocession). To be described in paragraph (k.1) and be a permitted deduction of a qualifying taxpayer, the policy of reinsurance must be issued by another insurer (the reinsurer) to the qualifying taxpayer in respect of one or more particular insurance policies that were issued by the qualifying taxpayer. Further, each of the requirements described in subparagraphs (i) to (v) of paragraph (k.1) must be met in respect of the amount.

Subparagraph (i) of paragraph (k.1) requires that the policy of reinsurance is in accordance with all applicable guidelines with respect to sound reinsurance practices and procedures, as amended from time to time, that are issued by the Superintendent of Financial Institutions or by a provincial regulatory authority having powers similar to those of the Superintendent.

Subparagraph (ii) of paragraph (k.1) requires that the qualifying taxpayer pays to the reinsurer, or to affiliates (i.e., persons related to the reinsurer), amounts (each of which is referred to in paragraph (k.1) as a "fee") under one or more agreements in writing, each of which is not the policy of reinsurance and is between the qualifying taxpayer and the reinsurer or an affiliate, as the case may be.

Subparagraph (iii) of paragraph (k.1) requires that the fees include ninety-nine per cent or more of all of the total of all amounts, each of which is a particular amount that is payable to the reinsurer and the affiliates for property acquired, manufactured or produced, or for services acquired or performed, in whole or in part outside Canada in respect of the policy of reinsurance. Subparagraph (iii) also requires that each of the particular amounts does not represent the estimate of the net premium of the policy of reinsurance, the margin for risk transfer of the policy of reinsurance or expenses incurred exclusively in Canada by the qualifying taxpayer to issue and administer the particular insurance policy.

Subparagraph (iv) of paragraph (k.1) requires that each fee paid by the qualifying taxpayer to the reinsurer or an affiliate is commensurate with the arm's length transfer price (as defined in subsection 247(1) of the *Income Tax Act*) for the provision of the property and services to which the fee relates. Subparagraph (iv) also requires that each fee paid by the qualifying taxpayer to the reinsurer or an affiliate is allowed as a deduction, an allowance or an allocation for a reserve under the *Income Tax Act* in computing the qualifying taxpayer's income for a specified year, or would be so allowed if the conditions set out in subparagraphs (a)(i) to (iii) of the description of A in the definition "qualifying consideration" applied to the qualifying taxpayer.

Finally, subparagraph (v) of paragraph (k.1) requires that the qualifying taxpayer pay or remit any amount that is payable or remittable under this Part by the qualifying taxpayer in respect of each fee paid by the qualifying taxpayer to the reinsurer or an affiliate.

**“qualifying consideration”**

The existing definition “qualifying consideration” in section 217 of the Act describes an amount that must be determined by a qualifying taxpayer for its specified year in respect of each outlay made, or expense incurred, outside Canada (within the meaning of subsection 217.1(2) of the Act). An amount of qualifying consideration for a specified year of a qualifying taxpayer in respect of an outlay made, or expense incurred, is determined by the formula A – B. Certain outlays made, or expenses incurred, outside Canada by the qualifying taxpayer fall within the description of element A. Element B is the total of all amounts, each of which is an amount that is included in the determination of element A and that is described in paragraph (a) or (b) of element B. If an amount is captured under the description of B, it may only be deducted once under that description.

Element B is amended to clarify the definition “qualifying consideration” in respect of supplies made to a qualifying taxpayer of a financial service that includes the issuance, renewal, variation or transfer of ownership of a policy of reinsurance. Element B is now the total of all amounts, each of which is an amount that is included in the determination of element A and that is described in paragraph (a), paragraph (b) or new paragraph (c) of element B.

Existing paragraph (a) describes an amount that is a permitted deduction of the qualifying taxpayer for the specified year or a preceding specified year of the qualifying taxpayer, other than an amount described by paragraph (b). A consequential amendment is made to paragraph (a) so that it also excludes an amount that is a returned commission described by new paragraph (c).

New paragraph (c) applies only where two conditions are met. First, a particular supply has to be made to the qualifying taxpayer of a financial service that includes the issuance, renewal, variation or transfer of ownership of a policy of reinsurance (including a policy of retrocession) in respect of one or more particular insurance policies that were issued by the qualifying taxpayer. Second, a particular amount in respect of the particular supply has to both be included in the amount determined under the description of element A and be any part of the value of the consideration for the particular supply.

Where paragraph (c) applies, it describes an amount (referred to as a “returned commission”) that meets the following four conditions. First, the amount must be included in the particular amount in respect of the particular supply. Second, the amount must be attributable to expenses incurred exclusively in Canada by the qualifying taxpayer to issue and administer the particular insurance policies. Third, the amount must be returned to the qualifying taxpayer as a ceding commission (as defined in this section) in respect of the particular insurance policies. Finally, the amount must be required to be included under the *Income Tax Act* in computing the qualifying taxpayer’s income for the specified year or for another specified year of the qualifying taxpayer, or would be so required to be included if the conditions set out in subparagraphs (a)(i) to (iii) of the description of A applied to the qualifying taxpayer.

Given the new definition “ceding commission” in this section, paragraph (c) only applies in respect of an amount paid to a qualifying taxpayer that is an insurer by another insurer (the reinsurer) under an agreement for the supply of a financial service that includes the issuance, renewal, variation or transfer of ownership of a policy of reinsurance (including a policy of retrocession) issued by the reinsurer in respect of one or more particular insurance policies issued by the qualifying taxpayer.

Further, since paragraph (c) only describes an amount that is required to be included in the qualifying taxpayer's income under the *Income Tax Act*, paragraph (c) only describes an amount where the qualifying taxpayer, in computing its income under the *Income Tax Act*, claims a deduction in respect of the gross amount of the consideration in respect of a policy of reinsurance (and therefore includes this gross amount in element A of this definition) and separately includes in its income an amount as a ceding commission in respect of the policy of reinsurance. If the qualifying taxpayer in computing its income instead claims a deduction in respect of an amount of the consideration in respect of a policy of reinsurance that is net of the ceding commission amount (and therefore includes only this net amount in element A of this definition) and does not separately include in its income an amount as a ceding commission in respect of the policy of reinsurance, then paragraph (c) will be a nil amount in respect of the amount attributable to a ceding commission in respect of the policy of reinsurance.

**"ceding commission"**

The new definition "ceding commission" in section 217 of the Act is used in the definitions "external charge" and "qualifying consideration" in this section. A ceding commission arises where a particular insurer has obtained a policy of reinsurance (including a policy of retrocession) issued by another insurer (the reinsurer) in respect of one or more particular insurance policies that were issued by the particular insurer. A ceding commission is an amount that is paid to the particular insurer by the reinsurer under an agreement for the supply of a financial service that includes the issuance, renewal, variation or transfer of ownership of the policy of reinsurance and that compensates the particular insurer for property acquired, manufactured or produced, and for services acquired or performed, exclusively in Canada by the particular insurer to issue and administer the particular insurance policies.

**"margin for risk transfer"**

The new definition "margin for risk transfer" in section 217 of the Act is used in the definitions "loading" and "permitted deduction" in this section. The definition applies in the case where a particular insurer has obtained a policy of reinsurance (including a policy of retrocession) issued by another insurer (the reinsurer) in respect of one or more particular insurance policies that were issued by the particular insurer.

A margin for risk transfer is an amount that meets three conditions. First, the amount is payable to the reinsurer by the particular insurer under an agreement for the supply of a financial service, which includes the issuance, renewal, variation or transfer of ownership of the policy of reinsurance. Second, the amount exclusively represents compensation for the assumption, by the reinsurer, of the risk of potential future claims under the particular insurance policies. Finally, the amount is in addition to, and separate from, the estimate of the net premium of the policy of reinsurance. It should be noted that all or part of an amount that is a margin for risk transfer may become profit of the reinsurer.

**Clause 66**

**Internal Charge**

ETA
217.1(4)

Existing subsection 217.1(4) of the Act provides an interpretation rule for determining an amount, referred to as an internal charge, for a specified year of a qualifying taxpayer. An internal charge is generally an amount that is treated, for income or profit tax purposes, both as income or profit in a particular country other than Canada and as a deduction from income in Canada. A qualifying taxpayer that has made an election under section 217.2 of the Act in respect of a specified year is required to self-assess tax on the total of all internal charges and external charges for the specified year that are greater than zero.

A consequential amendment is made to subsection 217.1(4) to update a cross reference as a result of an amendment to the definition “external charge” in section 217 of the Act.

The amendment to subsection 217.1(4) applies to any specified year of a person that ends after November 16, 2005.

**Clause 67**

**Where confidential information may be disclosed**

ETA
295(5)

Existing section 295 of the Act prohibits the use or communication of confidential information obtained in the course of administering Part IX of the Act except as otherwise permitted in that section.

Subsection 295(5) nevertheless authorizes a government official to communicate confidential information in limited circumstances. New subparagraph 295(5)(d)(ix) is added so that confidential information may be provided to an official of the Canada Revenue Agency solely for the purpose of enabling the official to collect amounts owing to Her Majesty in right of Canada or of a province under the *Government Employees Compensation Act*, the *Canada Labour Code*, the *Merchant Seamen Compensation Act*, the *Canada Student Loans Act*, the *Canada Student Financial Assistance Act*, the *Postal Services Continuation Act, 1997*, the *Wage Earner Protection Program Act*, the *Apprentice Loans Act* or a law of a province governing the granting of financial assistance to students at the post-secondary school level.

In addition, to ensure greater consistency in the information sharing rules in federal tax statutes, subsection 295(5) is amended to permit information sharing in respect of certain programs where such information sharing is permitted under the *Income Tax Act*.

These amendments come into force on royal assent.

**Clause 68**

**Purely Cosmetic Services**

ETA
Sch. V, Pt. V.1, section 1

Section 1 of Part V.1 of Schedule V to the Act exempts all supplies of property and services made by a charity that is not a public institution as defined in subsection 123(1) of the Act, except those supplies listed in paragraphs (a) to (o).

Section 1 is amended by adding new paragraph (p) to exclude from exemption, under that section, a supply of a service rendered to an individual for the purpose of enhancing or otherwise altering the individual's physical appearance and not for medical or reconstructive purposes or a supply of a right entitling a person to such service. Examples of purely cosmetic services the supply of which would be excluded under new paragraph (p) would include surgical and non-surgical procedures generally aimed at enhancing or altering one's appearance, such as liposuction, hair replacement procedures, hair removal, botulinum toxin injections and teeth whitening, that are not provided for the purpose of treating a medical condition or for reconstructive purposes. In limited circumstances, a supply of a purely cosmetic service made by a charity may continue to be exempt under another provision of the Schedule.

This amendment applies to any supply made after March 22, 2016.

**Clause 69**

**Insulin pens and needles**

ETA
Sch. VI, Pt. II, section 21

Section 21 of Part II of Schedule VI to the Act zero-rates supplies of insulin infusion pumps and insulin syringes. These devices are used to inject insulin for the treatment of diabetes. Insulin itself is currently zero-rated as a drug under Part I of Schedule VI to the Act.

Section 21 is amended by adding a specific reference to insulin pens and insulin pen needles. These devices are also used to inject insulin for the treatment of diabetes and are an alternative to insulin infusion pumps and to traditional insulin syringes.

This amendment applies to any supply made after March 22, 2016 and to any supply made on or before that day unless, on or before that day, an amount was charged, collected or remitted as or on account of tax under Part IX of the Act in respect of the supply.

**Clause 70**

**Intermittent Urinary Catheters**

ETA
Sch. VI, Pt. II, section 25.1

New section 25.1 of Part II of Schedule VI to the Act has the effect of zero-rating supplies of intermittent urinary catheters that are supplied on the written order of a specified professional (as defined in section 1 of that Part) for use by a consumer named in the order.

This amendment applies to any supply made after March 22, 2016.

**Clause 71**

**Feminine Hygiene Products**

ETA
Sch. VI, Pt. II.1, section 1

New section 1 of Part II.1 of Schedule VI to the Act has the effect of zero-rating a supply of a product that is marketed exclusively for feminine hygiene purposes and is a sanitary napkin, tampon, sanitary belt, menstrual cup or other similar product.

New section 1 applies to any supply made on or after July 1, 2015.

## Part 3 – Amendments to the Excise Tax Act (Excise Measures), the Excise Act, 2001 and Other Related Texts

## Excise Tax Act (Excise Measures)

**Clause 72**

**Definitions**

ETA
2(1)

Subsection 2(1) of the *Excise Tax Act* (the “Act”) provides definitions that apply for the purposes of the non-goods and services tax/harmonized sales tax portion of the Act.

**Subclauses 72(1) and (2)**

The amendment to section 2 adds the new definition “heating oil”.

This amendment to subsection 2(1) comes into force, or is deemed to have come into force, on July 1, 2016.

**Definition “heating oil”**

New definition “heating oil”, for excise tax purposes, means any fuel oil that is consumed exclusively for providing heat to a home, building or similar structure and that is not consumed for generating heat in an industrial process, including any commercial process that involves removing moisture from a good. This definition is introduced to ensure that excise tax relief for heating oil applies only to heating in respect of buildings.

**Subclause 72(3)**

In general, if fuel has been purchased or imported for a use for which excise tax is not payable and the purchaser or importer sells or appropriates the fuel for a purpose for which the fuel could not have been purchased or imported without payment of excise tax at the time of purchase or importation, existing subsection 23(9.1) provides a self-assessment mechanism to ensure that excise tax becomes payable by the person who sells or appropriates the fuel.

In light of the new definition “heating oil”, a special transitional rule is applied to existing subsection 23(9.1) of the Act to ensure that all fuel oil that is sold or appropriated as the new definition “heating oil” after June 2016 is treated equally from an excise tax perspective, regardless of whether the fuel was purchased or imported before July 2016. In effect, if a purchaser or importer of fuel oil sells or appropriates the fuel oil after June 2016 for a purpose for which it could not have been purchased or imported after June 2016 without payment of excise tax and if the fuel oil meets three specific conditions, this special transitional rule provides a self-assessment mechanism to ensure that excise tax becomes payable by the purchaser or importer of fuel oil if the purchaser or importer sells or appropriates it.

The three specific conditions to be met in respect of the fuel oil are: 1) it is delivered to a purchaser or imported, as heating oil, before July 2016; 2) no excise tax was imposed, levied or collected under subsection 23(1) of the Act at the time of its delivery or importation; and 3) it is not intended for use, or not used, after June 2016, as the new definition “heating oil”.

In these circumstances, the special transitional rule provides that excise tax becomes payable, in the case of fuel that is sold, by the person who sells it at the time of delivery to the purchaser of the fuel and, in the case of fuel that is appropriated, by the person who appropriates it at the time of its appropriation.

**Subclause 72(4)**

Generally, under existing paragraph 68.01(1)(a) of the Act, if excise tax has been paid in respect of diesel fuel and a vendor delivers the diesel fuel to a purchaser for use as heating oil, an application may be made and a refund may be paid:

- to the vendor, if the vendor applies for the payment and the purchaser certifies that the diesel fuel is for use exclusively as heating oil and the vendor reasonably believes that the purchaser will use the diesel fuel exclusively as heating oil; or
- to the purchaser, if the purchaser applies for the payment and uses the diesel fuel as heating oil and no application in respect of the diesel fuel can be made by the vendor.

Given the new definition “heating oil”, a special transitional rule is applied to existing paragraph 68.01(1)(a) of the Act, if excise tax has been paid in respect of diesel fuel that is delivered to a purchaser after March 22, 2016 but before July 2016 for use as heating oil. In these circumstances, an application may be made and a refund may be paid:

- to the vendor, if the vendor applies for the payment, the purchaser certifies that the diesel fuel is either for use exclusively, before July 2016, as heating oil, or for use exclusively, after June 2016, as the new definition “heating oil”, and the vendor reasonably believes that the purchaser will use it exclusively as the purchaser has certified; or
- to the purchaser, if the purchaser applies for the payment, the purchaser uses, before July 2016, the diesel fuel as heating oil, or uses, after June 2016, the diesel fuel as the new definition “heating oil”, and no application in respect of the diesel fuel can be made by the vendor.

**Clause 73**

**Exemption for Generation of Electricity**

ETA
23(8)(c)

Subsection 23(8) of the Act contains a limited number of provisions that relieve the application of excise tax in specific circumstances. In particular, paragraph 23(8)(c) currently provides that the excise tax on diesel fuel is not payable in the case of diesel fuel for use in the generation of electricity, except where the electricity so generated is used primarily in the operation of a vehicle.

**Subclauses 73(1) and (2)**

Paragraph 23(8)(c) is amended to remove the relief for diesel fuel used in or by a vehicle, including a conveyance attached to the vehicle, of any mode of transportation. As such, no relief will apply to fuel used to produce electricity in any vehicle, such as a train, ship, or airplane, or in any conveyance attached to the vehicle, irrespective of the purpose for which the electricity is used.

This amendment to paragraph 23(8)(c) applies to diesel fuel delivered to a purchaser, or imported, after June 2016.

**Subclause 73(3)**

In general, if fuel has been purchased or imported for a use for which excise tax is not payable and the purchaser or importer sells or appropriates the fuel for a purpose for which the fuel could not have been purchased or imported without payment of excise tax at the time of purchase or importation, existing subsection 23(9.1) provides a self-assessment mechanism to ensure that excise tax becomes payable by the person who sells or appropriates the fuel.

In light of the amendment to paragraph 23(8)(c), a special transitional rule is applied to existing subsection 23(9.1), to ensure that all diesel fuel used in the generation of electricity after June 2016 is treated equally from an excise tax perspective, regardless of whether the fuel was purchased or imported before July 2016. In effect, if a purchaser or importer of diesel fuel sells or appropriates the diesel fuel after June 2016 for a purpose for which the diesel fuel could not have been purchased or imported after June 2016 without payment of excise tax and if the diesel fuel meets three specific conditions, this special transitional rule provides a self-assessment mechanism to ensure that excise tax becomes payable by the purchaser or importer of diesel fuel if the purchaser or importer sells or appropriates it.

The three specific conditions to be met in respect of the diesel fuel are: 1) it is delivered to a purchaser or imported, before July 2016; 2) no excise tax was imposed, levied or collected under subsection 23(1) of the Act at the time of its delivery or importation; and 3) it is used after June 2016 in the generation of electricity in or by a vehicle, including a conveyance attached to the vehicle, of any mode of transportation.

In these circumstances, the special transitional rule provides that excise tax becomes payable, in the case of fuel that is sold, by the person who sells it at the time of delivery to the purchaser of the fuel and, in the case of fuel that is appropriated, by the person who appropriates it at the time of its appropriation.

**Clause 74**

**Payment for End-Users – Diesel Fuel**

ETA
68.01(1)(b)

Paragraph 68.01(1)(b) of the Act provides that, if excise tax has been paid under the Act in respect of diesel fuel, an application may be made and a refund may be paid, to a purchaser who uses the diesel fuel to generate electricity, except if the electricity so generated is used primarily in the operation of a vehicle.

Consequential to the amendment to paragraph 23(8)(c), paragraph 68.01(1)(b) is amended to provide that, if excise tax has been paid under the Act in respect of diesel fuel, an application may be made and a refund may be paid to a purchaser who uses the diesel fuel to generate electricity, unless the diesel fuel is used in or by a vehicle, including a conveyance attached to the vehicle, of any mode of transportation. This amendment ensures that no refund is payable in respect of fuel used to produce electricity in any vehicle, such as a train, ship, or airplane, or in any conveyance attached to the vehicle, irrespective of the purpose for which the electricity is used.

This amendment to paragraph 68.01(1)(b) applies in respect of diesel fuel used after June 2016.

## Excise Act, 2001

### Clause 75

### Where confidential information may be disclosed

EA, 2001
211(6)

Existing section 211 of the *Excise Act, 2001* (the "Act") prohibits the use or communication of confidential information obtained in the course of administering the Act except as otherwise permitted in that section.

Subsection 211(6) nevertheless authorizes a government official to communicate confidential information in limited circumstances. New paragraph 211(6)(e) is added so that confidential information may be provided to an official of the Canada Revenue Agency solely for the purpose of enabling the official to collect amounts owing to Her Majesty in right of Canada or Her Majesty in right of a province under the *Government Employees Compensation Act*, the *Canada Labour Code*, the *Merchant Seamen Compensation Act*, the *Canada Student Loans Act*, the *Canada Student Financial Assistance Act*, the *Postal Services Continuation Act, 1997*, the *Wage Earner Protection Program Act*, the *Apprentice Loans Act* or a law of a province governing the granting of financial assistance to students at the post-secondary school level.

In addition, to ensure greater consistency in the information sharing rules in federal tax statutes, subsection 211(6) is amended to permit information sharing in respect of certain programs where such information sharing is permitted under the *Income Tax Act*.

These amendments come into force on royal assent.

### Clause 76

### Enhancing Certain Security and Collection Provisions in the *Excise Act, 2001*

EA, 2001
286.1

New section 286.1 of the Act provides that the Minister of National Revenue (the "Minister") may require a person to furnish security if the unpaid portion of the total of all amounts that the person has been assessed, or of penalties that the person is liable to pay, under the Act is in excess of $10 million.

New section 286.1 applies to amounts that a person has been assessed, and penalties for which a person becomes liable, after the day of Royal Assent.

**Over $10,000,000 – security**
EA, 2001
286.1(1)

New subsection 286.1(1) of the Act sets out the calculation for the amount of security that the Minister may require from a person when the unpaid portion of the total of all amounts that the person has been assessed (e.g., duty payable and interest), or penalties that the person is liable to pay, under the Act is in excess of $10 million. In general, the amount of security that may be required is the amount, in excess of $10 million, that is determined by subtracting an amount based on the total of the amounts that the person has paid against the total of all amounts that the person has been assessed, or is liable to pay, under the Act from half of the total of all amounts that the person has been assessed, or is liable to pay, under the Act. This formula generally ensures that the amount of security that may be required is not greater than half of the total of all amounts that the person has been assessed, or is liable to pay, under the Act. The operation of this new administrative measure in conjunction with other existing collection provisions in the Act will help ensure the payment of large assessed amounts and penalties under the Act.

**When security to be furnished**

EA, 2001
286.1(2)

New subsection 286.1(2) of the Act provides that the person has 60 days to furnish the security required by the Minister under subsection (1).

**Types of security**

EA, 2001
286.1(3)

New subsection 286.1(3) of the Act provides that the types of security acceptable for the purpose of subsection (1) are those types of security that are acceptable for the purpose of paragraph 23(3)(b) of the Act. These include cash, a certified cheque, a transferable bond issued by the Government of Canada and a bond issued by certain financial institutions.

**Failure to comply**

EA, 2001
286.1(4)

If the security required under new subsection 286.1(1) is not furnished to the Minister as requested, new subsection 286.1(4) of the Act provides that the Minister may collect from the person an amount equivalent to the amount of security that was required. The collection restrictions under subsections 286(1) to (7) do not apply to new subsection 286.1(4).